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Research

ESG

Prevalence & Relevance

November 2021

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Contact

For any help or assistance please email us on concierge@nishithdesai.com or
visit us at www.nishithdesai.com

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Rahul Rishi
rahul.rishi@nishithdesai.com

Meyyappan N
meyyappan.n@nishithdesai.com

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Contents

1. Introduction

The relevance of sustainability as a significant trend in financial markets in the present time cannot be overlooked. The philosophy of corporations being mindful of, and responsive to their impact on society and environment has been growing a strong support. It is a new form of inclusive capitalism that recognizes the importance of creating long-term value, alongside with providing returns for shareholders. There has been a paradigm shift in the approach of maximizing short term returns for shareholders as the primary objective of the institutional investor and the investee company, to being mindful of the impact of such business decisions on the environment and the people.

"ESG" or **"Environmental, Social, and Governance"** is a form of sustainable investing that measures a corporation's ethical contribution to all relevant stakeholders. It is one of the most rapidly expanding sustainable investing methods. Portfolio designs that incorporate the investors' personal beliefs, institutional missions, as well as social and environmental goals meet more in investing demands. Across most developed nations, socially screened financial products have established a thriving market. Countries are moving steadily towards inculcating ESG into their regulatory framework by amending or enacting legislation to include ESG regulations which require strict corporate compliance. As the investor is becoming conscious of its responsibility towards the environment and the society the corporations are now feeling the pressure to disclose information of the negative impact of its actions on the environment and society. Investors have become responsible and now enquire about the ESG compliance reports to access the long-term viability of their investment. Such investor interest has prompted corporations to embody major ESG problems into their due diligence processes. This has also led to the creation of various innovative tools/indexes for ESG reporting and assessment. Such index providers have developed a broader range of screened indexes for companies to monitor, that can cater to the demand of investors having different moral preferences.

2. Defining The “E”, “S” and “G” Factors in ESG

“E” of ESG stands for Environment, it defines the impact of the corporation on climate change due to greenhouse gas emissions and the method for its reduction along with biodiversity practices and optimal water usage. It is the assessment of the impact on the environment and the management of environmental risks in both - direct operations and supply chains wherein corporations are mindful towards factors like resource depletion, raw material sourcing, waste and pollution management, carbon emissions responsible for global warming, etc. The incorporation of the environmental aspect in ESG focuses on enhancing financial performance, while introducing resilience within companies and financial institutions to withstand various climate related adversities.[1]

“S” stands for social factors, which takes into account the social relationships of corporations including interactions with labor, talent, data privacy, product safety and its consumers. Social factor accounts for company policies of fair pay, benefits to the employees, diversity, inclusion and prevention of all forms of harassment (including sexual harassment) at the workplace, level of employee engagement with management. The social factor is also a statement towards the public and/or political stance on human rights issues by a corporation.

“G” stands for governance, which takes into consideration internal system of control, policies and procedures of corporation. It refers to how ethically the management is in conducting its activities. Governance pertains to decision-making factors, from the acts of policy making to effective distribution of rights and responsibilities amongst the different participants such as corporations, their board of directors, managers, shareholders, and other stakeholders. This includes aspects of corporate governance, corruption, the rule of law, institutional strength, transparency etc. Investors are interested in the know-how of accurate and transparent accounting methods used by corporations. They want assurances that companies avoid conflict of interest in their choice of board members, do not use political contributions to obtain unduly favourable treatment and, most importantly, stay within the legal ambit of its practices.

These three factors, i.e., E, S & G are intertwined and cannot be read in isolation. They collectively play an important role in sustainability and assessing the ethical impact of any investment by a corporation.

I. Selection of Material ESG Factors[2]

ENVIRONMENAL	SOCIAL	GOVERNANCE
Biodiversity/land use	Community relations	Accountability
Carbon emissions	Controversial business	Anti-takeover measures
Climate change risks	Customer relations/product	Board structure/size
Energy usage	Diversity issues	Bribery and corruption
Raw material sourcing	Employee relations	CEO duality
Regulatory/legal risks	Health and safety	Executive compensation schemes
Supply chain management	Human capital management	Ownership structure
Waste and recycling	Human rights	Shareholder rights
Water management	Responsible marketing and R&D	Transparency
Weather events	Union relationships	Voting procedures

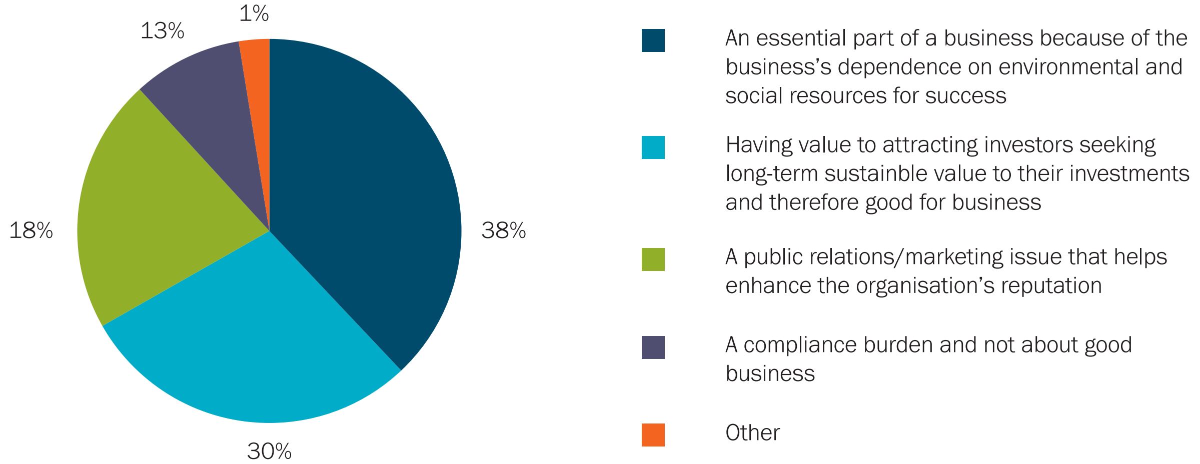
1. Chandan Bhavnani & Arnesh Sharma, **ESG Investing Scenario in India, Co-creating a better future,** Yes Bank, (2019) https://www.yesbank.in/pdf/esg_investing_scenario_in_India.

2. Gordon L Clark et al., **From the Stockholder to the Stakeholder : How Sustainability can drive financial outperformance,** (2015), https://arabesque.com/research/From_the_stockholder_to_the_stakeholder_web.pdf,. (The data has been synthesized from several sources, including MSCI (2013), UBS (2013), Bonini and Goerner (2011), Sustainability Accounting Standards Board (2013), Global Reporting Initiative (2013a), and the academic papers reviewed in this report. Table in alphabetical order).

II. Growing Importance of ESG Credit

There is a growing focus on long term impacts, thus business leaders and assets managers are collectively promoting long term corporate investment and risk management. The objective is to invest in the companies that stand to gain significantly from favorable sustainability trends. In a study conducted by University of Oxford in association with Arabesque Partners, it was concluded that it is in the best interest of managers and corporate investors to incorporate sustainability considerations into their decision making process.[3] Many investors have realized this sentiment according to a reporting exchange report[4] undertaken by the World Business Council for Sustainable Development (**"WBCSD"**), the number of sustainable reporting requirements increased ten-fold after the Rio Earth Summit, 1992.

Investors may choose not to invest in a corporation that has poor ESG which in turn can limit its access to capital and thus raise its cost of capital. Corporations which get in trouble on the environment front may be distracted by the **regulatory** headache resulting in higher costs and customers may avoid the corporation all together which in turn will have the effect of lowering revenue. If one does not treat employee's right, this could lower morale, increase turnover, and therefore lower **productivity.** Nearly 70% of business leaders acknowledge that ESG is essential for a good business.[5]



Perception of ESG

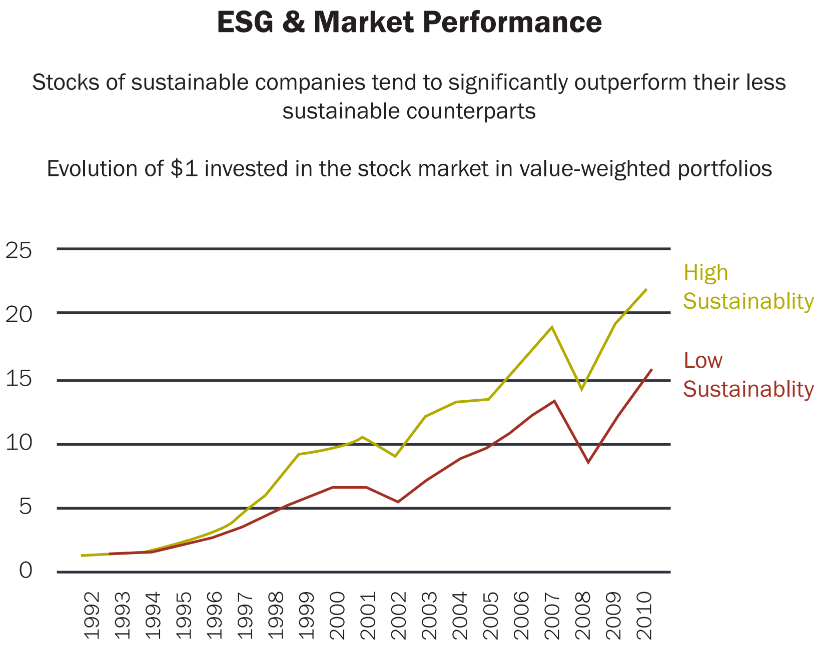
IMAGE SOURCE - The KPMG, CLP and HKICS Survey on Environmental, Social and Governance (ESG), ESG: A view from the top, (2018), https://home.kpmg/cn/en/home/insights/2018/09/esg-a-view-from-the-top.html.

ESG investing can be used in a number of ways such as: (1) investing in areas to make an impact, (2) excluding companies that do not align with goals, and (3) incorporating ESG into how one looks at each investment. ESG may matter for corporate and investment results. There is a positive relationship between ESG and financial performance and investment returns, so ESG can be used to screen companies with good financial and investment performance. Thus, it may be material for returns, which, if so, means that it should be considered in the investment process.[6] Not only is ESG correlated with profitability, but it is also correlated with volatility.

3. **Id.**
4. The Reporting Exchange, **Insights from the Reporting Exchange, ESG Reporting Trends,** (2017), https://docs.wbcsd.org/2018/02/Reporting_Exchange_Report_ESG_reporting_trends_2017.pdf.
5. The KPMG, CLP and HKICS Survey on Environmental, Social and Governance (ESG), **ESG: A view from the top,** (2018), https://home.kpmg/cn/en/home/insights/2018/09/esg-a-view-from-the-top.html.
6. Subodh Mishra, ESG Matters, Harvard Law School Forum on Corporate Governance, (Jan. 2020), https://corpgov.law.harvard.edu/2020/01/14/esg-matters/.

2.Defining The "E", "S" and "G" Factors in ESG

However, the relationship is opposite. Higher volatility is associated with lower ESG Performance. The chart below shows the relationship between ESG and Market Performance.



Source: Eccles, Robert G, loannis loannou and George serafeim 'The Impact of Corporate Sustainability on Organizational Process and Performance' Management Science 60, no 11 (November 2014); 2835-2857. http://www.hbs.edu/faculty/Publication%20Files/SSRN-id1964011_6791edac-7daa-4603-a220-4a0c6c7a3f7a.pdf

Image Source: Robert G. Eccles et al., The Impact of Corporate Sustainability on Organizational Processes and Performance, 60 Management Science (2010).
(The data from the Research was later cited by Forbes.com in the George Kell, Remarkable Rise of ESG, https://www.forbes.com/sites/georgkell/2018/07/11/the-remarkable-rise-of-esg/?sh=46b2a63c1695.**)**

Recently, Exxon's largest shareholders, investment firms BlackRock, Vanguard and State Street plus several California and New York State employee pension funds elected three activist directors by joining hand with a small hedge fund firm Engine No. 1. The decision of BlackRock and the other investors to shake up Exxon's board in favour of sustainability paid well and the company's share price, after years of market underperformance, rose more than 50 percent year to date after Engine No. 1 started its campaign at the end of 2020.[7]

The growing significance of ESG issues to investors can be seen in the recent survey by Earnest and Young (**"EY"**).[8] The survey found that, of the 98% of investors surveyed who assess ESG, 72% carry out a structured review of ESG performance, compared with just 32% in the previous survey conducted two years earlier. Moreover, many of those who currently use an informal approach, plan to move to a more rigorous regime (39%). Institutional investors are aligning their portfolios toward better ESG performance. This signals a different approach from focusing on "responsible funds," and instead seeing ESG issues as fundamental to the performance for all investments.

7. Stuart R. Levine, **Don't Get Left Behind On ESG,** FORBES, (23 Aug. 2021), https://www.forbes.com/sites/stuartrlevine/2021/08/23/dont-get-left-behind-on-esg/?sh=218a1de8199a.

8. EY Climate Change and Sustainability Services (CCaSS) Institutional Investor survey, **How will ESG performance shape your future,** (2020), https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/assurance/assurance-pdfs/ey-global-institutional-investor-survey-2020.pdf.

2. Defining The "E", "S" and "G" Factors in ESG

The importance of ESG compliances from a practical viewpoint can be summarised as[9]:

1. Strong ESG programs can increase stock liquidity.

2. ESG initiative can unlock competitive value as companies that recognize the importance of adapting to changing socio-economic and environmental conditions are better able to identify strategic opportunities and meet competitive challenges.

3. ESG investors are more interested in building long-term value over a multi-year period than being solely interested in short-term capital gains, which is beneficial for a corporation in making bankable relations with their investors.

4. Private capital financing for ESG related projects is dramatically increasing. According to JP Morgan, the overall market for green, social, and sustainable bonds is estimated to grow 49% to around $690 billion in 2021.

5. Corporations that perform better on ESG compliances can retain better talent in their workforce.

Indian companies such as Tech Mahindra, Infosys and Wipro are a part of the Dow Jones Sustainability Index (DJSI) which assesses the ESG performance of companies globally.[10] Tata Consultancy Services (TCS)[11] and Reliance Industries[12] recently announced roadmaps towards reduction in greenhouse gas emissions towards zero.

The non-compliance of ESG by corporations can **result in a higher cost of capital, higher volatility** due to controversies and **other incidences such as labour strikes, fraud accounting and other governance irregularities.** This can be illustrated from various recent scandals faced by big corporations for failing on the EGS benchmarks of investors. Companies like WeWork have faced scrutiny for their lack of leadership accountability, as well as conflict of interest leading to lack of basic internal control including inadequate oversight of CEOs and other senior executives. Similarly, Volkswagen emission tests scandal[13] and the misuse of data had caused significant financial damage to the corporation due to such ignorance. Volkswagen installed a defeat device which systematically improves, during approval procedures, the performance of the vehicle emission control system. The software helped make the cars meet exhaust pollution standards when monitored in tests but in real, the emissions exceeded the limits. The scandal costed Volkswagen 30 billion euros ($35 billion) in fines and civil settlements and led to the recall of millions of vehicles.[14] Volkswagen henceforth has asked more than a billion euros from ex-CEO Martin Winterkorn making it the highest ever claim for damages against a company executive in Germany.[15]

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9. Bestsy Atkins, **Strong ESG Practices Can Benefit Companies and Investors: Here's How,** (5 Jun. 2018), https://www.nasdaq.com/articles/strong-esg-practices-can-benefit-companies-and-investors-2019-03-13.
10. Dow Jones Sustainability World Index, **S & P Dow Jones Indices,** (23 Nov. 2020), https://portal.csa.spglobal.com/survey/documents/DJSIComponentsWorld_2020_.pdf
11. Business Standard, **TCS recently announced that it plans to reduce its GHG to the extent of 70 percent by 2025 and eventually drive it down to zero by 2030,** (3 Jun. 2021), https://www.business-standard.com/article/companies/tcs-aims-to-reduce-emissions-by-70-in-2025-bring-down-to-zero-by-2030-121060301206_1.html.
12. Business Standard, **Reliance Industries announced plans to cut down on CO2 emissions during its Annual General Meeting in 2020,** (12 Sep. 2021), https://www.businesstoday.in/current/corporate/mukesh-ambani-plans-to-cut-down-carbon-dioxide-emission-at-ril/story/410055.html.
13. **Volkswagen "Clean Diesel" Marketing v. Volkswagen,** 2018 SCC OnLine US CA 9C 107.
14. Economic Times, **Volkswagen loses top court case in European Union in diesel scandal,** (17 Dec. 2020), https://economictimes.indiatimes.com/news/international/business/volkswagen-loses-top-court-case-in-european-union-in-diesel%20scandal/articleshow/79778404.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.
15. Economic Times,**Volkswagen demands billion-euro 'dieselgate' payout from ex-CEO: report,** (23 Apr. 2021), https://economictimes.indiatimes.com/news/international/business/volkswagen-demands-billion-euro-dieselgate-payout-from-ex-ceo report/articleshow/82220700.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps.

3. ESG and Covid-19

The COVID-19 pandemic changed the businesses run, to focus and account for the many ramifications of a global pandemic. The after effects of the pandemic would result in more people falling into poverty, more lives lost, and greater inequality, primarily affecting the most underserved population unless swift action is taken by both the public and private sectors. Businesses have gone bankrupt due to the onset of recession brought in by the pandemic. It is thus easy to assume that the focus of corporations would shift from a long-term sustainable investing and growth method to short term financial gain for 'getting back on their feet'. However instead of acting as a deterrent to the ESG compliances it has acted as a wake-up call for many investors and policymakers to accelerate the need for a different approach to investing. In a recent survey, J.P. Morgan polled investors from 50 global institutions, representing a total of $12.9 trillion in assets under management (AUM) on how they expected COVID-19 would impact the future of ESG investing. Some 71% of respondents responded that it was "rather likely," "likely," or "very likely" that the occurrence of a low probability / high impact risk, such as COVID-19, would increase awareness and actions globally to tackle high impact / high probability risks such as those related to climate change and biodiversity losses.[16] According to the WEF COVID-19 Risks Outlook[17], policy makers in many parts of the world, after their initial lassitude in tackling the pandemic, have come to see the enormity of the risks we are all up against. This realization needs us to reenergize our exploration of new ways of working and reducing our own carbon emissions. According to Blackrock data,[18] 88 percent of sustainable funds in their analysis outperformed their non-sustainable counterparts in the period 1 January to 30 April 2020. Meanwhile, Morningstar reported 51 of their 57 sustainable indices outperformed broad market counterparts in the first quarter of the year and MSCI reported 15 of their 17 did the same.

The pandemic has served as the first real proof-point for sustainability, underlining the fact that ESG investing does not come at a cost, but more than that can future-proof investments and in some cases boost returns, all while helping to shape a better future. In the face of this crisis, the facts are now proving the resilience of sustainable investing. The areas of occupational health and safety, social safety nets, worker protection, responsible purchasing practices and supply chain issues, as well as diversity and digital rights including privacy have come into the radar of investors along with issues of climate change after the pandemic. Pandemic of COVID-19 has played a primary role in reinforcing the importance of ESG as a key approach to long term business resilience.

16. Survey conducted by JP Morgan, **Tracking the ESG Implications of COVID-19 Crises,** (July, 2020), https://www.jpmorgan.com/insights/research/covid-19-esg-investing.

17. World Economic Forum, **Insight Report, COVID-19 Risks Outlook A Preliminary Mapping and Its Implications,** (May, 2020), http://www3.weforum.org/docs/WEF_COVID_19_Risks_Outlook_Special_Edition_Pages.pdf.

18. Blackrock, **Sustainable Investing: Resilience amid uncertainty,** (2020), https://www.blackrock.com/corporate/literature/investor-education/sustainable-investing-resilience.pdf.

4. ESG and CSR

ESG is not an entirely new concept; the social responsibilities of a corporation have been recognized and formulated earlier in terms of corporate social responsibility (**"CSR"**). There have been multiple examples in the history wherein either business have thrived or broken ties with entities related to gross violations of human or environmental rights. Businesses have been directly impacted from war economy. Germany under the Nazi rule is a prime example of what can go wrong when political objectives (which include social responsibilities) and the pursuit of profit become entwined. More than a dozen European billionaires today, linked to BMW, L'Oréal; Bosch etc. have past relations and family ties with the Nazi Party.[19] Most of these businesses today have publicly apologised for their associations with war crime and from benefitting from a war economy. The infamous terrorist attacks in New Zealand, where the attacker recorded his attack and asked the viewers to follow a YouTube channel names PweDiePie, had costed the youtuber a severance from Disney Channel. The corporations are becoming more and more aware of who they associate with and how that association will impact their image. With this increase in sensitivity a more nuanced description of social responsibility birthed. Some 'good' companies have always been well- governed, contributed to the society, and have been conscious of the environment. And that's why they have grown and remained relevant over the years. When the House of Tata set up their first textile mill called Empress Mill in Nagpur in 1877, there were numerous worker welfare initiatives implemented. There was a creche facility for the children of women workers, well-ventilated workplaces, provident fund and gratuity long before they became statutory in the West.[20]

Both ESG and CSR being a part of the corporate governance, increasingly overlap with each other in their application. The genesis of ESG and CSR is the same - adoption of practices and policies by corporations that are intended to have a positive influence on the world. CSR is a form of corporate self-regulation integrated into business models. It covers the overarching social, environmental, and economic concerns in a company's policies, practices, and decision-making. CSR commitments serve as keystones for corporate culture and give employees, investors, and consumers' insight into company values. Its aim is to increase the long-term profits or survival of a firm through constructing positive public relations and high ethical standards, in order to reduce the business and legal risk and build shareholder trust. Accordingly, the CSR strategies of a corporation are tightly related to its sustainable growth. They are generally self-regulated and can vary widely.

It is to be observed that CSR regime in India has been mandated owing to the growing trend towards social responsibility. The Voluntary Guidelines for Corporate Social Responsibility were introduced by the Indian Ministry of Corporate Affairs (MCA) in 2009, marking the start of formal CSR activities in India (**"CSR Guidelines"**). Since then, the Indian government has taken a number of steps to address CSR concerns, for instance - Central Public Sector Enterprises is required to develop a CSR budget. Thereafter, pursuant to Section 135 of Companies Act, 2013, Companies (Corporate Social Responsibility) Rules, 2014 were formulated. This norm of mandating the social roles of corporations have continued and spilled over to ESG regulations as well, which are discussed later.

ESG takes on CSR and builds on it in a manner that takes it out of the realms of pure philanthropy, to a concrete set of numbers which can be used by investors and consumers alike in understanding a company's philanthropic, social and internal governance practices.

Though CSR is about accountability, the qualitative nature of CSR makes it difficult to pin down. The will, values, and spirit of corporate culture can be captured by CSR which serves as a starting point to get to the next

19. Madeline Berg, **More Than A Dozen European Billionaires—Linked To BMW, L'Oréal, Bosch—Have Families With Past Nazi Ties,** FORBES, (2019), https://www.forbes.com/sites/maddieberg/2019/04/02/more-than-a-dozen-of-europes-wealthiest-billionaires-and-their-families-had-nazi-ties/?sh=6b87da056015.

20. Larissa Fernand, **3 asset managers share their views on ESG, Morning Star,** (Jul. 2021), https://www.morningstar.in/posts/64066/3-asset-allocators-share-views-esg.aspx.

step of measurable, data-driven change. ESG provides quantifiable indicators (including sustainable, ethical and corporate governance issues). It applies numerical figures as to how companies treat their staff, manage supply chains, respond to climate change, increase diversity and inclusion, and build community links.

For a long time, the corporations limited their focus on short term financial gain and thus there existed a gap between acknowledging the importance of sustainability and acting on it. Modern economic trends have suggested that financial as well as non-financial performance indicators collectively are responsible for a strong business hold in the market. ESG factors are a subset of non-financial performance indicators also referred to as intangible assets of a corporation. Intangible assets account for a significant proportion of the value of a corporation especially for the longer term. However, traditional financial reporting tools lack the capacity to take into account and inform investors about the value of reputation, quality, brand equity, safety, work-place culture, and customer-relations which are significant in a global economy. Within and across industries, there are a variety of technical solutions available for rating a corporation's ESG score keeping in consideration the intangible assets. ESG scores use publicly available data (such as emissions, human right concerns, etc.) to create a rating, often based on company surveys. With this information in hand, it's easy to see why companies focus on sustainable development when choosing new investments.

From the CSR perspective, it takes more than lip service to create new corporate values. It takes a top-down commitment. That often comes in the form of:

- Investing in new platforms for outreach campaigns.
- Creating new company-wide policies that incorporate CSR initiatives and values.
- Hiring third-party consultants and other assistance to build stronger CSR initiatives.

Both CSR and ESG aim to improve transparency of an entity. The courts have been using CSR as a tool to mandate companies' to work towards betterment of environmental and social issues. **In Court's on its own motion v. Union of India and Ors.**[21]**,** the Nagpur bench of Bombay High Court had directed Western Coalfields Ltd (a subsidiary of Coal India Limited), and MOIL –a miniratna state-owned manganese ore mining company headquartered in Nagpur to use its CSR fund to set up individual oxygen generation plants at GMC, IGMC, and AIIMS, Nagpur in order to combat the severe COVID 19 wave that hit India. As they are both part of corporate governance, it is expected to see both areas increasingly overlap in the future.

21. **Court's on its own motion v. Union of Inida and Ors.,** Suo Moto PIL No. 4 of 2020, Bombay High Court.

5. ESG Ratings and Indexes

ESG ratings are one of the most important ways via which investors and other market participants use ESG information. ESG ratings and ESG indexes are acquired from established ESG raters and are a relevant component amongst the investor's community while making an investment decision. They are a crucial aspect for a business to run.

Presently, ESG ratings are attracting significant traction in the global market and various private; public-private entities are now offering ESG portfolios. Even many mutual funds, brokerage firms, and robo-advisors are offering products that employ ESG criteria. Indian investors too are in line with the general global trend of ESG becoming more and more prominent. In the bulletin report released by SEBI in March 2021, an increasing number of ESG schemes by mutual funds and investment in such schemes were seen. The trend of investment is increasing tremendously in ESG schemes; from around INR 2100 crore invested in FY 2019-2021, to around INR 3800 crore in FY 2020-21 till 31st Jan, 2021. In-fact, concerns like lesser fundraising due to pandemic have relegated and the focus on ESG issues has only increased.[22]

With such traction on ESG investing it is important that standard data sets are employed to measure ESG rating. Currently there is not a standardized approach for calculating ESG metrics. A variety of analytical approaches and data sources are employed to weigh ESG considerations and it often also depends on the client interest and potential value etc.[23] Valuating the current market for ESG indexes and ESG ratings is difficult, as they are present in infinite number. One reason that can be attributed to this huge influx is the low design costs and the modest operating costs. Nevertheless, they are some ESG indexes which are most prevalent in the market, described in the below section.

ESG Indexes are benchmarks where companies can compare their performance to its peers and also enhance its reputation in the general media. Major ESG ratings and/or indexes firms include:

- **MSCI ESG Research**- Morgan Stanley Capital International is the world's largest provider of ESG indexes. According to self-reported information, MSCI is the only major index provider with in house ESG research expertise. MSCI ESG Research Inc. is the world's largest provider of ESG research by client coverage. As part of the MSCI Group, they provide ESG ratings for over 6,000 global companies and more than 400,000 equity and fixed income securities.

- **Bloomberg ESG Data Service**- It works via integration of ESG data collected for over 10,000 publicly-listed companies globally into the Bloomberg Equities and Intelligence Services. Based on the disclosure of quantitative and policy-related ESG data, Bloomberg ESG Disclosure Scores rate companies annually. In 2016, Bloomberg had over 12,200 ESG customers, providing ESG data to mainstream investors worldwide.

- **Dow Jones Sustainability Index (DJSI)** – It was the first global sustainability benchmark launched in 1999.

- **Thomson Reuters ESG Research Data** – It is the first agency to provide raw ESG data to investors and now provides ESG data on over 6,000 public companies.[24]

- **S&P BSE Greenex:** This index is designed to track the performance of the top 25 "green" companies in terms of GHG emissions, market capitalization, and liquidity.

22. SEBI, Monthly Bulletin, (Mar. 2021), https://www.sebi.gov.in/reports-and-statistics/publications/apr-2021/sebi-bulletin-march-2021_49910.html.
23. CFA Institute, ESG Investing and Analysis, https://www.cfainstitute.org/en/research/esg-investing.
24. Betty Moy Huber et al., **ESG Reports and Ratings: What They Are, Why They Matter,** Harvard Law School Forum on Corporate Goverance, (Jul. 2017), https://corpgov.law.harvard.edu/2017/07/27/esg-reports-and-ratings-what-they-are-why-they-matter/.

5.ESG Ratings and Indexes

- **S&P BSE Carbonex:** It measures the performance of firms in the S&P BSE 100 index based on their commitment to reducing climate-related risks.
- **S&P BSE 100 ESG:** It is a market capitalization weighted, float-adjusted index that measures exposure to securities that meet sustainability investing criteria while keeping a risk and performance profile.
- **Nifty 100 ESG:** With a base date of April 1, 2011, it is designed to measure the performance of firms within the Nifty 100 based on their ESG score. The stocks must be part of the Nifty 100 index and have an ESG score to be included in the index.
- **Nifty 100 Enhanced ESG:** It's an advanced index with identical qualities to the NIFTY 100 ESG Index, only it takes into account an additional element. To be included in the index, companies must have a normalized ESG score of at least 50%.

The ESG raters should promote objectivity, transparency, and quality so that the user can build confidence in them. One may note that the ESG rating should be rule-based and content specific. For example- A bank should not be accessed in the same way as a factory for Co2 emissions. Thus, factors or constituents of measuring ESG should be specific to the company's region, country, and industry and should be calculated in accordance with the impact on ESG performance. All major successful ESG raters follow the abovementioned best practices.

As ESG is a complex and dynamic parameter that is continuously evolving, it is relevant for the indexes/ratings to be constantly revised. Among the various ESG rating methods, **ESG integration** appears to outperform **negative screening techniques** as an investing strategy. Negative screening, positive screening, norms-based screening, sustainability themed reporting, and community investing are some of the key impact investing methods. Negative screening is the method by which investors exclude or reduce investment in particular countries or entities on the basis of certain ESG criteria. On the contrary, positive screening is a method by which investors include or invest more in entities having high ESG rating compared to other market players in the industry. Apart from this, norm-based screening is also an exclusionary method practice through which investor groups put certain non-negotiable standards in place that adhere to international practice, this includes universal concepts such as human rights and corruption.[25]

Currently a common framework does not exist for ESG measurement and this leads to disparity and lack of uniform comparison between companies and the compliances they follow. Because of the presence of material differences in the geographical economic conditions, there is no 'one size fits all' approach for ESG rating. This can be termed as a limitation on one hand, and on the other hand can be termed as an advantage too. Confusion among the users and fatigue in the market is seen with constantly changing and expanding horizon of ESG ratings. Further, there is ambiguity as to what exactly ESG means and as to what measurement scale to use.[26] Thus it is the need of the hour that the regulators come up with a **standard baseline** to measure ESG in accordance with consultation with relevant stakeholders. Understanding the relative merits and limitations of different metrics can help to form a more complete picture of ESG risks and opportunities

25. Tensie Whelan et al., **ESG and Financial Performance.** NYU (2021), https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM_ESG-Paper_2021.pdf.

26. Michael S. Pagano et al., 2018, **Chapter 18: Understanding ESG ratings and ESG indexes,** Boubaker S. et al., RESEARCH HANDBOOK OF FINANCE AND SUSTAINABILITY, (Edward Elgar Publishing, 2018).

6. ESG –Global Initiatives and International Frameworks

With sustainability slowly becoming the new standard for investing, ESG goals have increased tremendously. Similarly, enhanced growth in corporate reporting standards is seen to promote, measure, and monitor sustainability performance. There are various well-known international regulations and frameworks for mandating and reporting ESG. Some of the global initiatives and frameworks used are discussed in the section below.

ESG frameworks are like measuring sticks that measure the company's progress towards the set ESG goals. However, there is no uniform standard but a plethora of frameworks available, which often varies depending on the preferences and weights of the constituting factors. This variability also leads to confusion among investors, asset managers on deciding which ESG framework to follow. Since these frameworks are developed through a consultation process, they reflect a variety of stakeholder expectations.

I. Global ESG Initiatives

- **Paris Agreement:** Following the footsteps of the Kyoto Protocol, Paris agreement provided for the dual goal of assisting developing countries in achieving sustainable development while also assisting developed countries in meeting their mitigation targets. It primarily focuses on the environmental aspect but aims to improve conditions for a better tomorrow all over the globe and covers various social and governance factors. Art 6 recognizes **'the significance of non-market approaches that are integrated, holistic, and balanced'.** It aims for both mitigation and adaptation by getting sovereign units to commit to a sustainable future and build a cooperative framework to achieve it.

- **UN Sustainable Development Goals ("SDGs")** - To achieve sustainable development by 2030, United Nations member states established SDGs in 2015. The UN General Assembly adopted 17 SDGs as part of its 2030 Agenda for Sustainable Development. Over time SDGs are incorporated in a growing number of ESG assessment frameworks and is viewed as a method for shaping and prioritizing business strategy and associated reporting. SDGs have also shown an impact in investment structures. For example, issuers have begun to market SDGs bonds, designed to raise funds for initiatives that support the UN's SDGs. The United Nations Development Programme (**"UNDP"**) announced new consultation requirements in June 2020, with the goal of guiding private equity fund managers and bond issuers in directing investments toward the SDGs.[27]

- **Reporting frameworks:** Several reporting frameworks, such as the Global Reporting Initiative (**"GRI"**), the Integrated Reporting Framework (**"IR"**), and the Sustainability Accounting Standards Board (**"SASB"**), have emerged, which are discussed in detail below. Frameworks that align business strategies, such as the **United Nations Principles for Responsible Banking and Task Force on Climate-related to financial disclosures** recommendations, have also emerged as a global reporting trend and direct towards a route for standardization of the entire process.

- **Green, Social and Sustainability bonds:** Green Bonds are any type of bond whose proceeds will be used solely to finance or re-finance projects that have clear environmental benefits and are in line with the green bond principle's core components. Renewable energy, energy efficiency, pollution prevention and

27. Mark S. Bergman et al., **ESG Disclosures: Frameworks and Standards Developed by Intergovernmental and Non-Governmental Organizations,** Harvard Law School Forum of Corporate Goverance, (Sep. 2020), https://corpgov.law.harvard.edu/2020/09/21/esg-disclosures-frameworks-and-standards-developed-by-intergovernmental-and-non-governmental-organizations/.

control, environmentally sustainable management of living natural resources, land use, terrestrial and aquatic biodiversity conservation are some of the examples of eligible green project categories. Social bonds are revenue-generating bonds that raise funds for projects that promote positive social outcomes such as affordable basic infrastructure, access to essential services, affordable housing, job creation, food security, and socioeconomic advancement and empowerment.[28] Green and social assets are combined in sustainability bonds. The proceeds from these bonds are used to fund a mix of green and social projects.

- **UN Initiatives:** GRI and UN Global Compact released a report titled "Integrating the SDGs into Corporate Reporting: A Practical Guide (the **"Guide"**)[29] that provided corporations with a detailed, user-friendly manual for identifying and prioritizing SDG targets, setting objectives, and measuring and reporting progress. If corporations use the Guide, it has the potential to shape the future of corporate ESG disclosure. Other initiatives[30] include coalitions/initiatives such as United Nations Environment Programme Finance Initiative (**"UNEP FI"**), United Nations Principles for Responsible Investment (**"UN PRI"**), Climate Disclosures Standards Board (**"CDSB"**).

- **Development of ESG Indices:** Some key indices include S&P Global Water Index, S&P Global Clean Energy Index, MSCI Global Environment Index. BSE Carbonex and Greenex, MSCI Women's Index and other broad-based and thematic ESG indices have been launched.

Few of the widely used and recognized global ESG performance measurement or reporting frameworks are-

- **Global Reporting Initiative ("GRI"):** Following public outrage over the Exxon Valdez oil disaster, GRI was established in 1997. The goal was to establish the first accountability framework to ensure that businesses followed responsible environmental conduct principles, which were later expanded to cover social, economic, and governance issues. GRI relies on voluntary disclosure and became the first global standard for sustainability reporting (GRI Standards). Under universal and specific standards, the standards allow for qualitative and quantitative data disclosure. The universal standards are looking for information on general management parameters, while the specific standards allow for reporting based on business operations.

- **United Nations Global Compact ("UNGC"):** Established in 2000, the United Nations Global Compact is a voluntary effort based on CEO commitments to adopt universal sustainability principles and support UN goals.[31] Companies must report on the 10 principles derived from the established international documents of their respective areas. These include human rights derived from Universal Declaration of Human Rights; the environment from Rio Declaration on Environment and Development, Labour from International Labour Organization Declaration on Fundamental Principles and Right to work, and corruption from United Nations Convention Against Corruption.[32]

- **Sustainability Accounting Standards Board (SASB):** SASB was established in 2011 as a non-profit organisation to assist businesses and investors in developing a common language around the financial implications of sustainability prospects. Companies must provide financially material sustainability information to their investors in accordance with SASB Standards. The Standards are available for 77 industries and define the subset of ESG issues that are most relevant to each industry's financial performance.

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28. Unicredit, **The Green Bond and ESG Chartbook,** (Feb. 2021) https://www.research.unicredit.eu/DocsKey/credit_docs_2021_179233.ashx?EXT=pdf&KEY=n03ZZLYZf5kKmcnaBAVJA21IBZieIh-meW7SwX_rkg8=&T=1.
29. Business Reporting on SDGs, **Integrating the SDGs into corporate reporting,** https://d306pr3pise04h.cloudfront.net/docs/publications%2FPractical_Guide_SDG_Reporting.pdf.
30. Gibson Dunn, Navigating the dynamic ESG landscape: key UK considerations for boards and senior management,(Nov. 2020), https://www.gibsondunn.com/wp-content/uploads/2020/11/WebcastSlides-Navigating-the-dynamic-ESG-landscape-key-UK-considerations-for-boards-and-senior-management-05-NOV-2020.pdf.
31. United Nations Global Compact, **About the UN Global Compact,** https://www.unglobalcompact.org/about.
32. United Nations Global Compact, **The Ten Principles of the UN Global Compact,** https://www.unglobalcompact.org/what-is-gc/mission/principles.

- **Integrated Reporting (IR):** The International Integrated Reporting Council (**"IIRC"**) was established in August 2010 with the goal of developing an internationally recognized framework for a process that reflects an organization's strategizes regarding value creation over time. Representatives from the corporate, investment, accounting, securities, regulatory, academic, and standard-setting sectors, as well as civil society, are all represented at the IIRC. Companies must set their own standards because the IR does not provide uniform metrics. An IR gives information about an organization's resources and relationships, which are referred to as "the capitals."

- **ISO 26000:** Established in 2010, it is intended to aid organizations in their efforts to contribute to long-term development. Its goal is to urge them to go beyond legal compliance, understanding that following the law is a fundamental responsibility of any firm and an important component of their social responsibility. The purpose is to develop a common understanding in the sphere of social responsibility and social responsibility initiatives, rather than to replace them. Thus, it provides a voluntary guidance framework rather than a certification or standard. It is based on seven principles and lists 37 areas that businesses might report on based on their materiality.

Disclosure requirements vary by country and region. From the EU's Corporate Sustainability Reporting Directive (**"CSRD"**) to the UK's constantly changing disclosure a requirement, having a framework that fits the required reporting standards is essential. While most ESG disclosure is made voluntarily, this is beginning to change, particularly in Europe, as regulators are becoming increasing proactive. The major regulatory frameworks governing disclosure requirements by various countries are discussed below.

II. International Regulatory Frameworks for Corporate Reporting Standards

A. European Union ("EU")

By far the most powerful force, reforming the financial system to support investments for sustainable activities is the European Union. The EU has passed the Non-Financial Reporting Directive (**"NFRD"**) in 2014 and the Sustainable Finance Disclosure Regulation (**"SFDR"**) which came into effect on March 10, 2021. Under the NFDR, EU law requires certain large companies to disclose information on the way they operate and manage social and environmental challenges. This encourages these companies to develop a responsible approach to business as well as helps investors and other market participants to evaluate non-financial performance and diversity information.[33] SFDR forms part of a package of legislative initiatives undertaken[34] by EU, in lieu to deliver on the policy objectives under the European green deal as well as the EU's international commitments on climate and sustainability objectives. Taxonomy Regulation, a proposal for a Corporate Sustainability Reporting Directive (**"CSRD"**), further amendments in delegated legislations are part of the package of **Sustainable Finance Action Plan. The goal of these legislative initiatives is to engage financial services providers in building a sustainable economy of the future.**

On April, 2021, the EU commission adopted the proposed CSRD as it felt that the level of information reported by companies under the NFRD does not meet the investor's needs and expectations. With the objective of directing capital toward sustainable activities and to provide investors with the ESG disclosures and information they need to consider in their investment decisions this directive was adopted. CSRD would amend the existing reporting requirements under the NFRD and would take effect in 2023. The CSRD introduces various changes like:

33. European Commission, **Corporate sustainability reporting,** https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en.

34. Euopean Comission, Sustainable finance, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en.

a. making the disclosure guidelines mandatory;

b. expanding the NFRD scope to include a broader range of companies and organisations, for instance the CSRD will cover 49,000 companies, compared to 11,000 under the previous NFRD;

c. requires business to disclose business risks as well as impact on the society and world at large;

d. developing an EU-wide ESG reporting standard in the absence of a globally agreed-upon standard etc.

In addition to the above requirements to disclose ESG factors, there are also specific disclosure requirements. For instance, the Low Carbon Benchmarks Regulation which requires administrators to include disclosure in their benchmark statement on how their methodology aligns with the carbon emission reduction target or achieves the Paris Agreement objectives. The goal is to complete it by the end of 2021.

EU states have also begun issuing green bonds in an effort to appeal to investors who want to consider ESG performance, following in the footsteps of large supranational issues such as by the World Bank and European Investment Bank. These instruments bind issuers to use funds raised for sustainable activities, such as climate mitigation and adaptation. In a market that had previously been highly homogeneous, a new asset type i.e EU sovereign green bonds is rapidly growing.

Other metrics are also included in the EU initiatives, like the EU's first global human rights sanctions regime was adopted by the Council in December 2020. This new regime allows the EU to impose travel bans and financial sanctions on individuals, entities, and bodies (both state and non-state actors) who are responsible for, involved in, or associated with serious human rights violations and abuses anywhere in the world, regardless of where they took place. The sanctions demonstrate the EU's strong commitment to uphold human rights and take concrete action against those who violate or abuse them.

B. France

France also has been at the forefront of sustainable finance initiatives both internationally and domestically, and sees real value in becoming a hub for the sector. The French government, as an early mover in terms of policy, has positioned French corporations and financial institutions to be particularly well positioned in terms of ESG.

Article 173 of the French Energy Transition for Green Growth Act, which went into effect in 2016, was the world's first **mandatory climate change financial disclosure law,** requiring ESG and climate reporting. Only publicly traded companies, banks and credit providers, asset managers, and institutional investors are covered by Article 173. It requires climate change-related reporting, including a provision on physical climate risks, in line with the TCFD's voluntary climate-related risk disclosure guidance. The law establishes three requirements: providing a general description of the investor's ESG policy; disclosing the resources allocated to ESG analysis; and explaining the methodology and results of the climate risk assessment. However, the law allows for flexibility in achieving these goals by using a **"comply or explain"** approach i.e. companies must either comply or explain reasons regarding why climate risk are irrelevant.

In September 2020, the French government released its Green Hydrogen Plan, which outlines a €7 billion national strategy for carbon-free hydrogen with three main goals: (i) putting in enough electrolysers to contribute significantly to the economy's decarbonization; (ii) promoting the development of a clean mobility sector in France, particularly for heavy vehicles; and (iii) promoting the development of an H2 industrial sector in France, which will create jobs and ensure France's technological expertise.

C. United States

US as the world power, is also in the race of increasing ESG disclosure and compliance requirements. The various recent initiatives includes-

1. The Securities and Exchange Commission (**"SEC"**) issued a request for information on climate risk and ESG disclosures in March 2021.[35] This is expected to lead to a regulatory proposal requiring issuers to disclose information on climate change and possibly a wider range of ESG issues.

2. The White House issued an Executive Order on Climate-Related Financial Risk[36] in May 2021, which included measures aimed at increasing ESG disclosure and accelerating the use of ESG criteria in ERISA-governed retirement plans, including the Federal Thrift Retirement Plan, the country's largest retirement plan.

3. The Investor Statement of Solidarity to Address Systemic Racism and Call to Action, endorsed by over 120 investors and organisations, was released by the Racial Justice Investing (**"RJI"**) Coalition in 2020.[37] The Statement calls on the investment community to be accountable and take action to end systemic racism and promote racial equity and justice. Following the police killings of George Floyd and Breonna Taylor, ongoing police violence against black communities gained spotlight. This got worsened by the disproportionate health and economic impact of COVID-19 on black and other minority populations, after which this initiative was launched.

4. Before the end of 2020, the Department of Labor squeezed in a final rule on proxy voting, which establishes a regulatory framework for private employee benefit plan fiduciaries to exercise shareholder rights.[38] This final rule directs plan fiduciaries to only engage in proxy voting decisions when such a decision could have a financial impact on the retirement plan, in line with the DOL's recent investment rule limiting plan fiduciaries' investment considerations to only "pecuniary factors."

5. The One Planet Private Equity Funds (**"OPPEF"**) initiative was formed by five global private equity firms to "advance the understanding of climate-related risks and opportunities" within portfolio companies so that they can "build better and more sustainable businesses." OPPEF intends to join two other One Planet initiative groups, one for sovereign wealth funds and the other for asset managers. Authorities in the United States are paying closer attention to whether or not there is any forced labour in a company's supply chain. Increased enforcement actions by the US Customs and Border Protection agency in relation to goods imported into the US and concerns that they were manufactured using forced labour have accompanied this pressure. Apart from this, US Supreme Court has started to consider cases raising ESG issues.

35. U.S Securities and Exchange Comission, **Public Input Welcomed on Climate Change Disclosures,** (15 Mar. 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

36. The White House, **Executive Order on Climate-Related Financial Risk,** (20 May. 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/.

37. Racial Justice **Investing, Investor Statement of Solidarity to Address Systemic Racism and Call to Action,** https://www.racialjusticeinvesting.org/our-statement.

38. U.S. Department of Labor issues final rule on proxy voting and shareholder rights by employee benefit plans, (20 Jan. 2021), https://www.dol.gov/newsroom/releases/ebsa/ebsa20201211-1.

Global sustainable investing assets, 2016-2018-2020 (USD billions):

REGION	2016	2018	2020
Europe*	12,040	14,075	12,017
United States	8,723	11,995	17,081
Canada	1,086	1,699	2,423
Australasia*	516	734	906
Japan	474	2,180	2,874
Total (USD billions)	22,839	30,683	35,301

Source: Global Sustainable Investment Review 2020[39]

III. ESG Reporting Framework in India

Initially, the concept of ESG reporting in India was through Business Responsibility Reports (**"BRR"**) and CSR reporting. BRR is a report (part of the annual report) submitted to Indian stock exchanges by the top 1000 listed entities by market capitalization. Recently, SEBI, the market regulator, made it mandatory for the top 1,000 listed companies to adopt an ESG model, known as Business Responsibility and Sustainability Reporting (**"BRSR"**), beginning 2022. With the changing economic trend, India's effort in sustainability reporting has modulated from the traditional concerns about directors and shareholders alone to increasing integration of ESG goals and other stakeholders into development agendas.

The development in responsible business strategies started when Ministry of Corporate affairs issued National Guidelines on Social, Environmental and Economic Responsibilities (**"NVGs"**) in 2011 that guided businesses on responsible business conduct. The process of revising the NVGs began in 2018 to match them with developing global concerns, the SDGs, and the United Nations Guiding Principles on Business and Human Rights (**"UNGPs"**). After extensive consultation from various stakeholders, National Guidelines on Responsible Business Conduct (**"NGRBC"**) were issued in 2019. BRSR has covered the Environmental, Social and Governance (ESG) and Sustainability aspects and is evolved from NGRBC principles, which itself emanate from Social Development Goals (SDGs). In the next section, CSR reporting is explained followed by BRSR reporting.

A. CSR Reporting

In April 2014, the Indian government introduced a detailed corporate social responsibility (**"CSR"**) regime as a part of the then newly introduced Companies Act, 2013 (the **"Act"**). As per Section 135 of the Act, CSR obligations apply to all companies, who, in the preceding financial year have a:

- net worth of at least INR5 billion (approx. US$69 million);
- turnover of at least INR10 billion (approx. US$138 million); or
- net profit of at least INR50 million (approx. US$689,000).

In September 2020, the Indian government amended Section 135 of the Act under the Companies (Amendment) Act, 2020. In furtherance of this amendment, on January 22, 2021, the Indian government amended the Companies (CSR Policy) Rules, 2014 (the **"CSR Rules"**) and introduced many key changes to the CSR regime. The key changes includes:[40]

39. Global Sustainable Investment Review 2020, http://www.gsi-alliance.org/ (last visited 9 Sep.2021).

40. Companies (Corporate Social Responsibility Policy) Rules, 2014, published vide notification No. G.S.R. 129(E), (27 Feb. 2014), https://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf.

- Companies undertaking CSR obligations by themselves or through certain specified intermediaries, these intermediaries will have to mandatorily register with the Indian government and obtain a CSR registration number. This will enable the government to monitor any CSR activity undertaken by such intermediaries through these sources.

- The CSR committee is required to formulate an annual action plan to implement the principles of the company's CSR policy.

- Any unspent CSR amount in a particular financial year for an ongoing project will have to be spent within a period of six (6) months from the end of the financial year for the planned CSR activities. If such surplus amount remains unspent at the expiry of the prescribed period, the company will have to transfer the surplus amount to a fund specified in Schedule VII of the Act. These funds include the Clean Ganga Fund, the Prime Minister's National Relief Fund and the PM CARES fund.

- The Board of a company is required to disclose the composition of the CSR committee, the CSR policy and CSR projects approved by the Board on the company's website. Further, the Board's annual report for each financial year is required to include a report on its CSR efforts in the format prescribed in the amended CSR Rules.

- If a company spends an amount in excess of its prescribed CSR obligations in a particular financial year, such a company is permitted to set off the excess CSR expenditure against its CSR obligations in the next three (3) financial years.

- Any amount spent by a company for the creation or acquisition of a capital asset will be considered as expenditure towards its CSR obligations only if such a capital asset is held by: (i) a company established under section 8 of the Act, a registered public trust or a registered society, having charitable objects and a CSR registration number; (ii) beneficiaries of the CSR project such as self-help groups or collectives; or (iii) a public authority.

Regulators around the globe, including India, are tightening regulations around ESG disclosures for companies, as investors interest in ESG is growing manifold. Indeed, in the future, one will see a time where there is no investment without considering ESG constituents.

B. BRSR Reporting

On May 10, 2021, SEBI issued a Circular[41] containing the format of the BRSR by listed entities. The BRSR is a notable departure from the existing BRR and a significant step towards bringing sustainability reporting at par with financial reporting.

A few of the key disclosures sought in the BRSR are highlighted below:

a. An overview of the entity's main ESG risks and opportunities, as well as strategies for mitigating or adapting to the risks and their financial repercussions.

b. Goals and targets related to sustainability along with performance related to them.

c. Disclosures related to environment such as resource usage, air pollutant emission, GHG emission, transitioning to circular economy, generation of waste and practices for its management, etc.

d. Disclosures related to social aspects including workforce, value chain, communities and consumers, such as:

41. SEBI, Circular, (10 May 2021), https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html. Also see, SEBI, Meeting files , https://www.sebi.gov.in/sebi_data/meetingfiles/apr-2021/1619067265752_1.pdf.

i. Employees/workers: Gender and social diversity including measures for differently abled employees and workers, turnover rates, median wages, welfare benefits to permanent and contractual employees/workers, occupational health and safety, trainings etc.

ii. Communities: disclosures on Social Impact Assessments (SIA), Rehabilitation and Resettlement, Corporate Social Responsibility etc.

iii. Consumers: disclosures on product labelling, product recall, consumer complaints in respect of data privacy, cyber security etc.

The detailed disclosures and the changes sought in **BRSR REPORTING FRAMEWORK** are highlighted in **ANNEXURE I**

7. ESG Based Investing

I. Mutual Funds

As discussed above sustainable investing is popular in developed markets and is rapidly gaining prominence in India too. The ESG funds are exponentially growing in the Indian Mutual Fund Industry and are amongst the fastest growing globally, with almost 25% of institutional investors now branded as ESG. In research done by Morning Star (a prominent ESG ratings agency) it was found that mutual funds with a 5-globe Sustainability Rating (the highest possible score), when compared to 1-globe funds, have better risk-adjusted returns relative to their category, less volatility, and greater exposure to financially healthy companies.[42] However, it is still a long way for India, because, in comparison to global economy, India has fewer ESG funds. With the recent disclosure requirements and the more transparent approach adopted via regulation by SEBI, the growth in the ESG funds sector is surely to be seen.[43]

SEBI has also made it mandatory for domestic mutual funds to vote on resolutions floated by companies where they have investments. Mutual funds now will compulsorily have to vote on important resolutions including but not limited to appointment and removal of directors, corporate responsibility issues etc. starting April 2021. Mutual funds from April 2022 will have to vote on all resolutions.[44] Asset managers see this as an ESG adoption strategy in India. In addition, on 31 August, 2021 SEBI asked all Mutual Funds, and all Asset Management Companies to disclose details of risk, performance of Mutual Fund schemes. The regulator stated that portfolio disclosure on **'Go Green initiative in mutual funds'** will also include the scheme risk-o-meter, name of benchmark and risk-o-meter of benchmark.[45] This regulatory shift is indeed a way forward for responsible investing.

II. Green Bonds

Proceeds of a Green Bond offering are 'ear-marked' for use towards financing 'green' projects. It is also one of the steps towards enhancing investment in ESG as these projects provide finance for renewables, bioenergy, and low carbon transports etc. So far, these bonds are issued by multilateral institutions such as the World Bank, private companies, and national and local government institutions.[46] The launch of various green indices such as S&P BSE CARBONEX (in 2012), MSCI ESG India (in 2013), and S&P BSE 100 ESG Index (in 2017) have allowed passive and retail investors to invest in 'green' companies. For example- the Ghaziabad Municipal Corporation (**"GMC"**) raised INR 150 crores through the issue of green bonds and they are currently listed on the Bombay Stock Exchange. GMC is using the funds for the construction of a tertiary treatment sewage plant. JSW Hydro Energy Limited has raised USD 707 million overseas through the issuance of USD denominated green bonds which are currently listed on the Singaporean Stock Exchange.[47] SEBI has also issued guidelines regarding disclosure requirements for issuance and

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42. Jon Hale, **U.S. ESG Funds Outperformed Conventional Funds in 2019,** Morningstar (Apr.16, 2020), https://www.morningstar.com/articles/973590/us-esg-funds- outperformed-conventional-funds-in-2019.
43. Patturaja Murugaboopathy and Gaurav Dogra, **India has fewer ESG funds than other top 10 economies** (27 Aug 2021), https://www.reuters.com/business/sustainable-business/india-has-fewer-esg-funds-than-other-top-10-economies-2021-08-26/.
44. Larissa Fernand, supra note 14.
45. SEBI, Circular, (31 Aug. 2021) https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-risk-o-meter-of-scheme-benchmark-and-portfolio-details-to-the-investors_52262.html.
46. Sanya Malhotra, **Green bonds: Is it green finance or green-washing?,** DownToEarth, (Aug. 2020), https://www.downtoearth.org.in/blog/energy/green-bonds-is-it-green-finance-or-green-washing--72755.
47. Eshvar Girish et al., **ESG in Indian Companies: Thinking Through the Sustainability Lens?,** National Law Review, Volume XI, Number 255, (12 Sep. 2021), https://www.natlawreview.com/article/esg-indian-companies-thinking-through-sustainability-lens.

listing of Green Debt Securities in India for Green bond issuance in May 2017.[48] These disclosure requirements are almost similar to that prescribed under international principles. This step by SEBI takes India one step closer towards achieving the ambitious target set by India's Intended Nationally Determined Contribution (**"INDC"**) for achieving objective of climate change and funding requirement of USD 2.5 trillion.

However, some investors and institutions argue that Green bonds are more of a green-washing exercise than a genuine effort towards Green recovery. Green washing refers to false dissemination of proceeds from the Green Bonds market to projects having negligible or negative environmental benefits. Thus one can call greenwashing as a false depiction regarding an organization's environmental strategies, goals, motivations, and actions.[49] For example, in 2014 green bonds were issued by GDF Suez for financing the Jirau Dam in Brazil which in turn led to the flooding of a rainforest. Thus a transparent, detailed, analytical analysis should be done while categorizing the green projects.

Despite the achievement of US$1 trillion, the Green bonds market still accounts for a small share in the overall debt market. Moreover, these bonds are often unpredictable, and, at times, unreliable. For investors and issuers in the developing economies there are various hurdles both at the institutional as well as the market level. For instance, inadequate knowledge of the existing international practices in green bond transactions, currency risks draws investors away from these instruments. Thus a homogenous approach would be beneficial for the developing economies as well for cross-border transactions to achieve the objective of sustainable investing.

III. Social Stock Exchange

The social stock exchange (**"SSE"**) is a novel concept in India and is meant to serve private and non-profit sector providers by channeling greater capital to them. The idea of the SSE was mooted in the Union Budget 2019-20, to create a platform for listing social enterprise, voluntary and welfare organizations for raising capital to address a social problem. The objective is to bridge the funding gap faced by social enterprises by providing an institutional framework.

The Government of India is also considering establishing an SSE. Recently a technical group report on SSE has been released by SEBI for public comments.[50] The SEBI report widely categorizes Social Enterprises into Non-Profit Organisations (**"NPOs"**) and For-Profit Social Enterprises (**"FPEs"**). The report emphasizes on enhanced and continuous disclosure, transparency and accountability to prevent misappropriation of funds and undue influences. The report also proposes to standardize the minimum reporting requirement with the help of clearly defined metrics. The report further suggests that Indian SSE will support innovative outcomes based financial instruments such as and Pay for Success (PFS) bonds, social venture funds.[51]

There is need for SSE because the social sector is widely dispersed and often lacks the structure and resources to achieve scale and generate income. Usually, the capital raised by these social enterprises is through philanthropy, incubator or accelerator programs, grants, and impact investments. Institutional support through SSE will provide social enterprises with an avenue for raising capital as well as will enable socially minded investors to diversify their investment portfolio. This will create the necessary social investment ecosystem which will place ESG features and social impact within the pursuit of profits and growth.

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48. SEBI, Circular, (30 May 2017) https://www.sebi.gov.in/legal/circulars/may-2017/disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_34988.html. Also see SEBI, Meeting File https://www.sebi.gov.in/sebi_data/meetingfiles/1453349548574-a.pdf.
49. Becker-Olsen K et al., **Greenwashing,** Encyclopedia of Corporate Social Responsibility. Springer, Berlin, Heidelberg, (2013), https://doi.org/10.1007/978-3-642-28036-8_104.
50. SEBI, Reports for Public Comments, (May 2021), https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/technical-group-report-on-social-stock-exchange_50071.html.
51. Varsha Aithala, **Idea of Social Stock Exchanges for India,** The Indian Forum, (Sep.2020). https://www.theindiaforum.in/article/social-stock-exchanges-india-sebi-s-promise

IV. ESG Loans

In April 2021, loan market trade associations in the US, UK and Asia, launched voluntary Social Loan Principles (**"SLP"**) for loans. These loans will be used to exclusively finance or re-finance projects that support economic activities which mitigate social issues and seek to achieve some positive social outcomes. The social loan principles are built on Green Loan Principles and are administered by the International Capital Markets Association (**"ICMA"**).[52] In India ESG Loans & sustainability linked loans are increasingly becoming popular methods towards achieving sustainable finance commitment by US and India's own commitment under Paris Agreement. One prominent example is of Bank of America helping UPL, an agrochemical industry, in raising sustainability-linked loan of $750 million. According to JP Morgan, the ESG-focused fund-raising or green bonds market is set to cross the $10-billion-mark by December 2021.

ESG investment is observing exponential growth and this reflects the investors' interest in ESG principles of their investee companies.[53] It is pertinent to note that the effects of ESG are not shown overnight. It rather it takes a long period of time to show upward financial performance.[54] However **the immediate benefit can be seen by corporations by avoiding the cost for repercussions for not following the ESG norms. A set of key environmental, social permits and licenses across India and a demo ESG Compliance Chart** is annexed as **Annexure II** and **Annexure III** respectively. The Annexures lists out possible ESG norms the companies should follow to significantly reduce the possibility of regulatory hurdles and ESG litigations. During ESG investing or any project orientation these general recommendations will come handy when performing due diligence and analyzing investment strategy. The repercussions of noncompliance with ESG norms can lead to a huge array of ESG litigations discussed in the below section.

52. Catherine Clarkin et al., **ESG Trends and Hot Topics,** Harvard Law School Forum on Corporate Governance, (Aug. 2021), https://corpgov.law.harvard.edu/2021/08/25/esg-trends-and-hot-topics/.

53. Economic Times, **Global banks push ESG loans in India as climate change threat worsens,** (6 Sep. 2021) https://bfsi-economictimes-india-times com.cdn.ampproject.org/c/s/bfsi.economictimes.indiatimes.com/amp/news/banking/global-banks-push-esg-loans-in-india-as-climate-change-threat-worsens/85971221.

54. Tensie Whelan et al., supra note 25.

8. ESG Litigation

Avoiding EGS related litigation is one form of immediate 'upward financial performance'. Recently, as sustainable business trends have gained popularity, so have the litigations for the corporations who are not on board with this change. ESG litigations are not a new phenomenon. Historically, litigations arising out of ESG factor such as environmental damage, corruption, damage to ecosystems etc have been brought by individuals/civil societies against corporations, as well the governments.

I. ESG Litigations Against Governments

In recent years, ESG litigations have forced governments to revisit their existing goals and obligations. The Dutch government was forced to intensify its efforts to achieve its emissions reduction target by the end of 2020 because of ESG litigation between the State of Netherlands and Stitching Urgenda. Urgenda sought a court order directing the State to reduce the emission of greenhouse gases so that, by the end of 2020, those emissions will have been reduced by 40%, or in any case at by at least 25%, compared to 1990. The Supreme Court of Netherlands relied upon the European Convention on the Protection of Human Rights and Fundamental Freedoms (**"ECHR"**) which required the states which are parties to the convention to protect the rights and freedoms established in the convention for their inhabitants. Article 2 of ECHR protects the right to life, and Article 8 of ECHR protects the right to respect for private and family life. A contracting state is obliged by these provisions to take suitable measures if a real and immediate risk to people's lives or welfare exists and the State is aware of that risk. The Supreme Court held that countries cannot escape their share of the responsibility to take measures by arguing that compared to the rest of the world, its own emissions are relatively limited in scope and that a reduction of its own emissions would have very little impact on a global scale. The State is obliged to reduce greenhouse gas emissions from its territory in proportion to its share of the responsibility. This obligation of the State to do 'its part' is based on Articles 2 and 8 of ECHR, because there is a grave risk that climate change will endanger the lives and welfare of many people in the Netherlands.[55] **In Friends of the Irish Environment CLG v. Fingal County Council**[56], the plaintiff brought a legal action challenging a five-year planning permission for a Dublin runway expansion. Ireland's High Court dismissed the planning permission and held that right to an environment that is consistent with the human dignity and well-being of citizens at large is an essential condition for the fulfilment of all human rights. In Reference re Greenhouse Gas Pollution Pricing Act[57], the Supreme Court of Canada ruled in favor of the federal government's carbon pricing policy noting that climate change is a threat to the country as a whole and the court upheld the legality of Greenhouse Gas Pollution Pricing Act, which was challenged by the provinces of Alberta Saskatchewan and Ontario.

II. ESG Infrastructure Litigation

In R (Plan B Earth and Others) v. Secretary of State for Transport and Others[58]**,** the Supreme Court reversed the Court of Appeal's decision that the planned third runway and expansion of Heathrow Airport was unlawful on climate change grounds, and determined that the UK Government had taken proper account of its climate

55. **Urgenda Foundation v. The State of the Netherlands, [2015] HAZA C/09/00456689,** Also available at 19/00135 (Engels), Availabe in English Translation https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007.
56. **In Friends of the Irish Environment CLG v. Fingal County Council,** [2017] IEHC 695.
57. **References re Greenhouse Gas Pollution Pricing Act,** 2021 SCC 11. Also available at https://decisions.scc-csc.ca/scc-csc/scc-csc/en/18781/1/document.do
58. R (Plan B Earth and Others) v. Secretary of State for Transport and Others, [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214, Also available at https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf

change commitments. Though the increased significance of ESG compliance is an opportunity for companies to showcase and present their good work, it has also created an increased litigation risk. These new challenges primarily fall into areas such as: misrepresentations, unfair and deceptive trade practices, risk to environment and ecosystem, individual consumer risks, securities fraud etc.

III. ESG Claims Against Corporation – Governance Issue and Supply Chains

In Vedanta Resources Plc and Konkola Copper Mines Plc (Appellants) v Lungowe and Ors. (Respondents)[59]**,** a group of Zambian claimants claimed negligence against an English-based parent mining company and its Zambian subsidiary, alleging personal injury, damage to property and loss of income, amenity and enjoyment of land as a result of discharges from a Zambian copper mine which was owned and operated by the Zambian subsidiary. The UK Supreme Court laid down basic guiding principles of vicarious liability of parent company over the actions of subsidiary companies. The Court held that parent company might incur a duty of care to third parties harmed by the activities of a subsidiary when : (i) where the parent has effectively taken over management of the subsidiary's actions and (ii) where the parent has given relevant advice to the subsidiary about how it should manage a risk. The Court rejected that there was any general limiting principle that a parent company could never incur a duty of care merely by issuing group-wide policies and guidelines and expecting the subsidiary to comply.

On 12 February 2021, in **Okpabi and others v Royal Dutch Shell Plc and Shell Petroleum Development Company of Nigeria Ltd**[60] the Supreme Court of UK reaffirmed its decision in Vedanta that UK parent companies may be liable for the overseas operations of their non-UK subsidiaries. The Court found that the claimants were able to demonstrate an arguable case that the UK-listed parent company owed a duty of care to third parties affected by oil spills from its subsidiary-operated pipelines in Nigeria.

In another case **Kalma and others v African Minerals Ltd and others**[61] which was dealing with the above principle the Court ruled the contrary. The case was that there were allegations of committing assaults and killings by state police forces, which were employed as security for a mine. The High Court - held (with the Court of Appeal agreeing) that no cause of action lay against the subsidiary or the English parent, as the relevant acts were committed by third parties outside their control. It is therefore far from obvious that a parent company can be held responsible for acts committed by third parties, especially when operational responsibility on the ground exclusively lies with the subsidiary company in the absence of the requisite level of control by the parent company.[62]

IV. ESG Litigations Related to Corporate Disclosures and Statements

In Guy Abrahams v Commonwealth Bank of Australia[63]**,** shareholders sued the Commonwealth Bank of Australia (CBA) and alleged that its 2016 annual report violated Corporations Act, 2001 as it failed to disclose climate change related business risks. The shareholders argued that the CBA knew or ought to have known that

59. **Vedanta Resources Plc and Konkola Copper Mines Plc v Lungowe and Ors., [2019] UKSC 20, [2019] 2 WLR 1051.**
60. **Okpabi and others v Royal Dutch Shell Plc and Shell Petroleum Development Company of Nigeria Ltd** [2021] UKSC 3.
61. **Kalma and others v African Minerals Ltd and others, [2018] EWHC 3506 (QB); with the appeal at** [2020] EWCA Civ 144.
62. Ashurst, ESG Litigation - **Get Ready, Respond and Resolve,** (Jan.2021), https://www.ashurst.com/en/news-and-insights/insights/esg-litigation---get-ready-respond-and-resolve/
63. **In Guy Abrahams v Commonwealth Bank of Australia,** VID879/2017.

climate-related risks could seriously disrupt the bank's performance. Therefore, investors should have been told the strategies for managing those risks so that they could make an informed decision about their investment. The Shareholders withdrew from the proceedings, after changes were made to the CBA's 2017 annual report, which included an acknowledgment from the directors that climate change posed a risk to CBA's operations. CBA has since also published its first climate policy position statement, and has pledged not to lend money to the coal mine project that triggered the litigation.

In late March 2020, in **In re Signet Jewelers Ltd. Sec.,**[64] a company settled a securities class action for $240 million alleging that statements in its code of conduct and code of ethics were false or misleading.[65] In Water & Sanitation Health, Inc. v. Chiquita Brands Int'l, Inc, a case was bought against Chiquita wherein the Plaintiff alleged that statements made by the company - about its environmentally safe business practices, including that it protects water sources by reforesting all affected natural watercourses, uses solid waste traps at all packaging stations to keep rivers and streams clean, and plants cover crops in all drainage ditches of banana farms rather than allowing chemical weed control, were false because the large-scale, monoculture banana activities of one of Chiquita's suppliers had contaminated the local community's drinking water. Washington court denied the company's motion to dismiss related to statements on Chiquita's website. The court determined that the company made very specific, factual statements on which the plaintiff had reasonably relied.[66]

In 2018 Mark McVeigh, then 23-year-old Australian pension fund member, filed suit against Rest alleging that the trustee violated the Corporations Act 2001 by failing to provide information related to climate change business risks and any plans to address those risks. The case was filed in the Federal Court of Australia. Later in 2018 the case was amended to allege Rest's trustee failed to act with care, skill and diligence when investing for McVeigh, and failed to act in his best interests, by not properly considering the risks climate change poses to the fund's investments. To satisfy the trustee's duties, the plaintiff claimed the trustee must seek information from its investment managers about climate risks and comply with the recommendations of the Task Force on Climate-related Financial Disclosures (**"TCFD"**). McVeigh sought declarations from the court to establish Rest's trustee breached its duty. The claim did not allege financial loss. Although the matter did not ultimately proceed to trial, Rest made a number of important acknowledgements in its public statement on 2 November 2020.

Rest has announced a number of initiatives that it has sought to implement (with McVeigh's acknowledgement and support), including but not limited to:

- implementing a long-term objective to achieve a net zero carbon footprint for the fund by 2050;
- measuring, monitoring and reporting outcomes on its climate related progress and actions in line with the recommendations of the TCFD;
- encouraging its investee companies to disclose in line with the TCFD recommendations;
- publicly disclosing the fund's portfolio holdings;
- enhancing its consideration of climate change risks when setting its investment strategy and asset allocation positions, including by undertaking scenario analysis in respect of at least two climate change scenarios (including one scenario consistent with a lower carbon economy well below 2°C this century); and

64. **In re Signet Jewelers Ltd. Sec,** No. 16-cv-6728, 2018 WL 6167889 (S.D.N.Y. November 26, 2018)

65. **Connor Kuratek (Marsh & McLennan Companies, Inc.) and Joseph A. Hall and Betty M. Huber (Davis Polk & Wardwell LLP, Legal Liability for ESG Disclosures,** https://corpgov.law.harvard.edu/2020/08/03/legal-liability-for-esg-disclosures/#5.

66. No. C14-10 RAJ, 2014 U.S. Dist. LEXIS 70673, **2-3 (W.D. Wash. May 22, 2014)., Available at https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAWHb%2FPDBPVvguIFm%2BtSugID&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&attdocparam=pB7HEsg%2FZ312Bk8OIuOIH1c%2BY4beLEAenR5wi6BMnd-E%3D&fromContentView=1

- actively considering all climate change related shareholder resolutions of investee companies and otherwise continue to engage with investee companies and industry associations to business plans and government policies to be effective and reflect the climate goals of the Paris Agreement.[67]

V. Securities Fraud Related EGS Litigations

Public companies are experiencing liability risk for corporate statements and commitments regarding their health and safety programs and operations. For instance, following the Deepwater Horizon incident in 2010, a number of investor plaintiffs brought actions against BP that were ultimately consolidated into a multidistrict action. Among the claims alleged is that BP made material misrepresentations about its safety reform efforts and ability to respond to deep-water oil spills in company sustainability reports, investor calls, and periodic corporate reporting.[68] The Texas district court agreed that certain of BP's statements were sufficiently concrete to support a 10(b) claim, and denied the company's motion to dismiss. This litigation remains ongoing.

Brazilian mining company Vale has been in securities fraud litigation for several years related to alleged misrepresentations in public filings and statements, including its sustainability reports, about the company's commitment to environmental, health, and safety compliance and sufficiency of corporate risk mitigation plans and procedures. In re Massey Energy Co. Securities Litigation, the court permitted an investor suit against Massey Energy claiming that the company had committed securities fraud by misleading the market about its safety and compliance record and its commitment to safety. The company had been periodically stating that it has a strong commitment to its minor's safety and health in its public statements. In May 2020, a federal court in New York permitted an investor class action suit against Vale SA to proceed following another deadly mining accident. The company allegedly ignored red flags about safety violations while touting its commitment to health, safety, and the environment, and by specifically citing comprehensive safety and "sustainability reports." A 2019 dam breach at the mine killed 259 people, and the company's American depositary shares lost a quarter of their value in the ensuing weeks. Investors brought suit under the antifraud provisions of the securities laws.[69]

In both cases, New York district courts parsed the cited public statements, finding that a number of Vale's public statements were representations of "present or historical facts" related to the affirmative steps that the company is taking or has taken with respect to environmental, health, and safety matters. Making "specific representations about its then existing practices for monitoring dam stability" can be the basis for a 10b-5 claim. Following the 2017 decision regarding the Fundão dam, the parties agreed to a proposed settlement that would require Vale to pay $25 million to the settlement class.[70]

VI. Human Rights Related ESG Litigation

The companies have now become more aware of their responsibilities towards human rights in businesses. The removal of Harvey Weinstein by the board of directors of The Weinstein Company, after he was accused of sexual misconduct and rape by several women, was done to safeguard the public image of the company.

In **Nestle USA, Inc. v. Doe**[71]**,** the petitioners claimed that they were enslaved and forced to work on cocoa farms in Côte d'Ivoire against their will, and that Nestle aided and abetted these violations by purchasing cocoa from

67. Available at https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/11/climate-change-test-case-settle-client-briefing.pdf
68. Alameda Cnty. Emps. Ret. Ass'n v. BP plc, No.10-md-2185; 4:12-cv-1256, 2013 U.S. Dist. LEXIS 171459, at *145 (S.D. Tex. Dec. 2, 2013).
69. In re Vale S.A. Sec. Litig., No. 1:15-cv-9539-GHW, 2017 U.S. Dist. LEXIS 42513 (S.D.N.Y. Mar. 23, 2017) (Vale I).
70. Ibid 62
71. **Nestle USA, Inc. v. Doe. 593 U. S.** ____ (2021), Also available at https://www.supremecourt.gov/opinions/20pdf/19-416_i4dj.pdf.

these farms, and by providing the farms with funds, farming supplies, and training. The issues presented to the US Supreme Court were whether an aiding and abetting claim against a domestic corporation brought under the Alien Tort Statute may overcome the extraterritoriality bar, and whether the judiciary has the authority under the Alien Tort Statute to impose liability on domestic corporations. The majority opinion in Nestlé did not address the question of corporate liability however the five Justices saw no reason to distinguish between corporations and natural persons as defendants. The Court observed that the notion that corporations are immune from suit under the ATS cannot be reconciled with the statutory text and original understanding and corporate status does not justify special immunity.

In **Nevsun Resources Ltd. v. Araya**[72]**,** the Supreme Court of Canada decided (five to four) that it was not "plain and obvious" that claims in damages arising from allegations of breach of customary international norms "have no reasonable likelihood of success". Customary international law becomes part of Canadian law automatically. This is different than treaty law, which needs Parliament to pass a law to bring it into force. Because customary international law is part of Canadian law, courts could, in the right cases, find Canadian companies responsible for violating it. The majority noted that violations of peremptory norms are serious violations of rights that are important to everyone, everywhere. They need to be strongly discouraged. The Court didn't decide whether Nevsun was responsible for violating the workers' rights. It said that the workers' lawsuit could go forward. It said that the trial judge would have to decide whether Nevsun breached customary international law and—if it did—how it should be held responsible

There is a long way for Human Rights related ESG litigations to develop and successfully meet their logical end. This form of ESG related litigation is often not allowed to proceed practically because of legal issues such as jurisdiction, unclear establishment of motives or grounds etc. For example the UK Supreme Court refused the Claimants' application for permission to appeal the Court of Appeal judgment in **AAA and others v Unilever PLC and Unilever Tea Kenya Limited**[73] wherein the claimants who were 218 Kenyan nationals, were attempting to bring mass tort claims against Unilever Plc and its Kenyan subsidiary, the owner of a tea plantation in Kenya, at which they had allegedly suffered ethnic violence at the hands of third-party criminals. This was surprisingly done after the welcoming Vedanta Judgement[74] was passed by the same Supreme Court.

VII.Climate Related ESG Litigation

In **Milieudefensie and others v Royal Dutch Shell plc**[75]**,** the Hague District Court ordered Shell to reduce CO_2 emissions by 45% by 2030 relative to 2019 levels. Following the decision of the Dutch Supreme Court in Urgenda[76], which established that, by failing to pursue a more ambitious greenhouse gas emissions reduction target, the Dutch government had breached its obligations under the European Convention on Human Rights (**"ECHR"**), The Hague District Court applied the same principle to Dutch private corporations, finding that they, too, owe a duty to mitigate the impacts of climate change.

In India, ESG has yet not been mandated however, the Indian Supreme Court has always played an active role in Environment, Social and Governance related litigation. In **Union Carbide Corporation v. Union of India**[77]**,** wherein the damages were sought on behalf of victims of Bhopal gas leak disaster from the multinational corporation, the court had examined the question as to the amount of damages that would be "just, equitable

72. **Nevsun Resources Ltd. v. Araya,** 2020 SCC 5,
73. **AAA and others v Unilever PLC and Unilever Tea Kenya Limited,** [2018] EWCA Civ 1532.
74. supra 58
75. In Milieudefensie and others v Royal Dutch Shell plc, ECLI:NL:RBDHA:2021:5339.
76. ibid
77. **Union Carbide Corporation v. Union of India,** 1989 SCC (2) 540.

and reasonable" for an over-all settlement of the case and held that the measure of damages payable had to be correlated to the magnitude and the capacity of the enterprises because such compensation had to have a deterrent effect. The court has applied 'Polluters Pay Principle' in numerous judgments to either shut down enterprises or compensate the victims for violation of their fundamental right. The recent ruling by the Supreme Court in the **Tata-Mistry**[78] dispute also brings to the fore the judicial view of companies having philanthropic objects and the positive spill-over effects for a larger stakeholder group outside the shareholder group.[79]

78. **Tata Sons Ltd v Cyrus Mistry and others,** Civil Appeal No. 440-441 of 2020.

79. Eshvar Girish et al., **supra** 48.

9. Conclusion – The Future of ESG Reporting & Investments

Entities with a good rating on significant sustainability issues have been shown to outperform the entities with bad ratings[80]. In fact, employees increasingly prefer organizations with a sense of purpose and responsible behavior.[81] Studies also show that employee satisfaction yields higher returns for the firm. The pandemic has also accelerated interest in ESG issues in 2020.

A new comprehensive system or a common framework for ESG reporting is the need of the hour to measure ESG rating from a standard baseline. Various initiatives like the EU's Taxonomy Regulation aim to create the world's first-ever 'green list' that intends to create a common language for investors and businesses to use when investing in projects and economic activities that have a substantial positive impact on the climate and the environment. Nevertheless, the legal framework is not complete since several technical screening criteria are expected to be specified in delegated legislation. Similar initiatives are under consideration in the UK.[82] Thus, it has to be seen how the muddled individual parameters of E, S and G factors are globally grouped together, creating a standard reporting mechanism. ESG today represents about one-quarter of all professionally managed assets around the world and is a relevant parameter in investment decision-making.

80. Mozaffar Khan et al., **Corporate Sustainability: First Evidence on Materiality**, 91 The Accounting Review, (2016).

81. Alex Edmans, **Does the stock market fully value intangibles? Employee satisfaction and equity prices,** 101 Journal of Financial Economics, 3 (2011).

82. Michele CrisostomoWhat **We Talk About When We Talk About ESG,** OBLB, (4 May 2021), https://www.law.ox.ac.uk/business-law-blog/blog/2021/05/what-we-talk-about-when-we-talk-about-esg.

Annexure – I

“BRSR Reporting Framework”

A. General Disclosures

I.	Details of the listed entity	1. Corporate Identity Number (CIN) of the Listed Entity 2. Name of the Listed Entity 3. Year of incorporation 4. Registered office address 5. Corporate address 6. E-mail 7. Telephone 8. Website 9. Financial year for which reporting is being done 10. Name of the Stock Exchange(s) where shares are listed 11. Paid-up Capital 12. Name and contact details of the person who may be contacted in case of any queries on the BRSR report. 13. Reporting boundary - Are the disclosures under this report made on a standalone basis (i.e. only for the entity) or on a consolidated basis (i.e. for the entity and all the entities which form a part of its consolidated financial statements, taken together)
II.	Products/services	1. Details of business activities 2. Products/Services sold by the entity
III.	Operations	1. Number of locations where plants and/or operations/offices of the entity are situated. 2. Markets served by the entity.
IV.	Employees	1. Number of employees and workers (including differently abled) 2. Participation/Inclusion/Representation of women 3. Turnover rate for permanent employees and workers
V.	Holding, Subsidiary and Associate Companies (including joint ventures)	1. Names of holding / subsidiary / associate companies / joint ventures
VI.	CSR Details	1. Whether CSR is applicable as per section 135 of Companies Act, 2013, if yes- Turnover (in Rs.) & Net worth (in Rs.)
VII.	Transparency and Disclosures Compliances	1. Complaints/Grievances on any of the principles (Principles 1 to 9) under the National Guidelines on Responsible Business Conduct (NVGs)* 2. Overview of the entity’s material responsible business conduct issues.*

*These particular disclosures will require special attention while shifting from BRR to BRSR.

B. Management and Process Disclosures

This section deals with Management Approach and helps businesses demonstrates the structures, policies and processes put in place towards adopting the NGRBCs.

C. Principle-Wise Performance Disclosure

This section is aimed at helping entities demonstrate their performance in integrating the Principles and Core Elements with key processes and decisions on a principle-wise basis. The disclosure sought is categorized as "Essential" and "Leadership" wherein the formed being mandatory and latter voluntary.

The reporting framework format has been provided by SEBI via a circular in May, 2021. Please refer here for full details- https://www.sebi.gov.in/sebi_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1_p.PDF .

Annexure – II

Key Enviornmental, Social Permits and Licenses Across India

S. No.	Legal Requirement	Issuing Authority
1	Environment Clearance	Ministry of Environment, Forest & Climate Change (MoEF&CC)
2	Consent to establish (CTE) / consent to operate (CTO) under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974.	State Pollution Control Board(SPCB)
3	Intimation Letter to the SPCB	State Pollution Control Board
4	Hazardous Waste Authorisation (HWA) under The Hazardous and Other Wastes (Management and Trans-boundary Movement) Rules, 2016	State Pollution Control Board
5	Forest Clearance	Ministry of Environment, Forest & Climate Change (MoEF&CC)/ State Forest Department
6	Permission / No Objection Certificate (NOC) for Ground water abstraction	Central Ground Water Authority (CGWA) / State Water Resource Department
7	Labour License	Labour Commissioner,
8	Migrant Workmen	Department of Labour
9	Building and Other Construction workers License	Labour Commissioner
10	CEIG (Chief Electrical Inspector to Government) Approval Letter	Office of Electrical Inspector
11	EPFO registration of Contractor	Employees Provident Fund
12	ESIC registration	Employee's State Insurance Corporation

Source- Documents shared **Point 4.** Status of Key Permits & Licenses (From the Final ESDD for Solar Projects In India_Norfund_10June2021)

Annexure – III

ESG Compliances Chart*

S.NO	INDIVIDUAL ELEMENT	RECOMMENDATIONS
I.	**GOVERANCE**	
1.	Governing Structure ("GS")	▪ A proper GS should be in place to manage E & S issues across units and operations. ▪ GS should be diversified. (Gender/Regions/Backgrounds)
2.	Stakeholders Engagement and Grievances Redressal	▪ Grievance Redressal Mechanism and other committees like Risk Audit, ESG etc. should be in place. ▪ Ethics and Vision document should be there and also communicated to employees.
3.	ESG policy and ESG Audit	▪ Every project should have - A separate ESG standalone policy with improvement programs. Detailed ESG standards and applied certifications. (ILO standards, Sustainability Reporting) ESG system review and Board recommendation on results.
II.	**ENVIORNMENT**	
1.	Environment Policy (**"EP"**)	▪ EP should cover sustainability issues which set out clear commitments and targets.
2.	Environment risk and opportunity assessment (ERA)	▪ A committee to monitor ERA should be there.
3.	Environment Impact Assessment (EIA)	▪ EIA disclosures should be there for the projects if applicable.
4.	Environment Licenses and Permits	▪ Permits and Licenses mentioned in Annexure I above are necessary.
III.	**SOCIAL**	
1.	Gender Grievance Redressal System ("GGRS")	▪ GGRS should be consistent with GOI's Vishakha Guidelines and constitution of Complaint committee.
2.	Health & Safety policy (H&S)	▪ H&S policy should signed by CEO or equivalent and maintenance of H&S risk register with regular review.
3.	CSR involvement	▪ Association with any NGO or association that works for social well-being to take social responsibility initiates.
4.	Anti-discriminatory policy & Diversity policy	▪ Antidiscrimination and diversity policy laying statistics of employee diversity.
5.	Certificate and standards	▪ ESG related systems implementation and certificates.
IV.	**ESG**	
1.	Environment, Social and Governance Committee	A standalone ESG committee can be incorporate with following elements- ▪ Policy ▪ Identification of Risks and Impacts ▪ Management Programs ▪ Organizational Capacity and Competency ▪ Emergency Preparedness and Response ▪ Stakeholder Engagement ▪ Monitoring and Review ▪ External Communication and Grievance Mechanism

Annexure – III

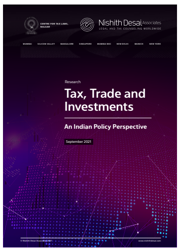
***Please note that this Annexure is general in nature. With different sector-specific projects, different jurisdictions and varied project scope, different regulations and standards will be applicable.
Thus this is only a reflective compliance chart that companies should follow in addition to sector specific/ project specific requirements.**

Source- SBI- Environmental and Social Governance (ESG) Compliance Study – Assessment Report, available at https://www.suprabha.org/uploads/SBI_ESG_Compliance_Study_report.pdf
Documents shared (From the DD Summary - Final ESDD for Solar Projects In India_Norfund_10June2021)

The following research papers and much more are available on our Knowledge Site: www.nishithdesai.com

The Future of mobility

September 2021



Tax, Trade and Investments

January 2021

Patent Litigation in India: Strategy and Law

July 2021

EdTech: From IT to AI

June 2021

The Indian Pharmaceutical Industry

April 2021

International Commercial Arbitration

April 2021

Doing Business in India

February 2021

Killer Acquisitions in Indian Pharma

January 2021

Privilege-and-Waiver: Attorney – Client Privilege

January 2021

NDA Insights

TITLE	TYPE	DATE
Indian Supreme Court Rules On Rejection of Civil Suit Based On Reliefs Sought	Dispute Resolution	October 2021
Indian Supreme Court Rules On the Enforcement of Foreign Award Against Non-Signatories (Gemini BAY V Integrated Sales)	Dispute Resolution	September 2021
Amazon V. Future – Indian Supreme Court Recognizes Emergency Awards Under the A&C Act	Dispute Resolution	August 2021
SEBI Introduces T+1 Rolling Settlement On an Optional Basis	Regulatory	October 2021
Amendment to SECC Regulations, 2018	Regulatory	August 2021
Drones Round-Up: Industry & Legal Updates	Regulatory	July 2021
Extra-Territoriality and Trademark Infringement: The Delhi High Court Revisits The "Purposeful Availment" Test	Intellectual Property	November 2021
The Delhi High Court Rules On the Scope of The BOLAR Exception	Intellectual Property	August 2021
Success for Red Bull as Delhi High Court Grants Injunction Against Use of Red Horse Mark and Label	Intellectual Property	July 2021
International Tax Update: India Moves to Revoke Retroactivity of 'Vodafone' Tax – An End to The Saga?	Tax	August 2021
CBDT Prescribes Valuation Rules for Slump Sales: Plugging The Gap	Tax	June 2021
Aar Denies Parent-Subsidiary Capital Gains Exemption in Buyback, Upholds Taxability Under Section 46A	Tax	May 2021
The Calm Before the Storm: How The Upcoming Data Protection Law Will Impact EdTech In India	Education	October 2021
Blockchaining Education - Legal Nuances to Know!	Education	September 2021
The 'ABC' Of Academic Credit Transfer in India: India Gives Students Flexibility in Higher Education Through Academic Bank of Credits	Education	September 2021

Research @ NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our "Anticipate-Prepare-Deliver" research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparallel mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to **Intellectual Property.**

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular "Hotlines", which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. **Imaginarium AliGunjan** is a platform for creative thinking; an apolitical eco-system that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness – that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear your suggestions on our research reports. Please feel free to contact us at
research@nishithdesai.com

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

Tel +91 22 6669 5000
Fax +91 22 6669 5001

SILICON VALLEY

220 S California Ave., Suite 201
Palo Alto, California 94306, USA

Tel +1 650 325 7100
Fax +1 650 325 7300

BANGALORE

Prestige Loka, G01, 7/1 Brunton Rd
Bangalore 560 025, India

Tel +91 80 6693 5000
Fax +91 80 6693 5001

SINGAPORE

Level 30, Six Battery Road
Singapore 049 909

Tel +65 6550 9856

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra–Kurla Complex
Mumbai 400 051, India

Tel +91 22 6159 5000
Fax +91 22 6159 5001

NEW DELHI

13-H, Hansalaya Building,
15, Barakhamba Road, Connaught Place,
New Delhi -110 001, India

Tel +91 11 4906 5000
Fax +91 11 4906 5001

MUNICH

Maximilianstraße 13
80539 Munich, Germany

Tel +49 89 203 006 268
Fax +49 89 203 006 450

NEW YORK

1185 Avenue of the Americas, Suite 326
New York, NY 10036, USA

Tel +1 212 464 7050

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Prevalence & Relevance

concierge@nishithdesai.com