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Investigating the Intricacies of Environment Social Governance (ESG) in the International Arena

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ABSTRACT

Environmental, Social, and Governance (ESG) factors have gained significant attraction in the realm of international finance, shaping investment decisions and corporate strategies. This paper delves into the intricate dynamics of ESG integration in the global arena, aiming to shed light on its multifaceted dimensions and implications. This paper explores about the undertakings of United Nation Sustainable Development Goals (UNSDG) with an objective to secure a sustained future, economic growth and social welfare and focuses on five key areas – people, planet, prosperity, peace, and partnership. Secondly, the research delves into different ESG approaches of various countries such as the American Approach, then the ESG through a European Eye, ESG perspectives in India and Africa, challenges associated with ESG measurement and reporting on a global scale. It analyses the diverse methodologies and metrics by stakeholders to assess ESG performance, highlighting the complexities of standardization and comparability across jurisdictions and industries. Drawing on empirical evidence and case studies, it elucidates the correlation between strong ESG practices and long-term value creation, while also acknowledging the measures by pro and anti ESG states, various regulations, guidelines, and conduct. Lastly, the paper discusses the role of stakeholders, including governments, investors, corporations, and civil society, in advancing the ESG agenda on a global scale. It emphasizes the importance of collaboration and dialogue in fostering sustainable development and addressing pressing socio-environmental challenges.

Keywords: *Environment Social Governance (ESG), UNSDG, Sustained future, Economic growth, American approach, European eye, perspective in India and Africa, Challenges, Anti-ESG States and fostering Sustainable Development.*

I. INTRODUCTION

In the words of former secretary-general of the United Nations, Ban Ki-moon, *"Sustainable development is the pathway to the future we want for all. It offers a framework to generate*

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economic growth, achieve social justice, exercise environmental stewardship, and strengthen governance."

In today's era, many private entities generate revenues larger than many countries' GDP; and therefore, a paradigm shift is observed in business practices. Unlike traditional times when the sole focus of businesses used to be on profit generation, today's world expects businesses to operate more responsibly shifting towards a more sustainable future.[3]

ESG comprises three components - Environmental (about corporate policies on protection of the environment, reduction of pollution and carbon emission etc); Social (pertains to the corporate relationship with internal and external stakeholders, ensuring the safety of workers etc) and Governance (deals with leadership, cyber safety, data privacy practices and ensures transparency, accuracy & integrity).

The rising awareness of ESG has led the companies to incorporate ESG initiatives in their operations, and the socially conscious investors to evaluate the ESG initiatives of a company before considering for potential investment.

II. Unveiling the undertakings of UNSDG

The United Nations adopted an ambitious '2030 Agenda for Sustainable Development' during its General Assembly Summit in New York on 25th September 2015. The resolution outlined 17 Sustainable Development Goals ("**SDGs**") for the prosperity of people and the planet.[4] Earlier the Earth Summit in Rio de Janeiro (1992), the Millennium Declaration in New York (2000), Earth Summit of Johannesburg (2002) were some important milestones which emphasized on sustainability and Millennium Development Goals; and they led the way to the Resolution of 2015, i.e. known as the United Nations Sustainable Development Goals ("**UNSDG**").

The objective of UNSDG was to secure a sustained future, inclusive economic growth, protection of the environment and overall inclusive social welfare. The core of this agenda was based on the principle of universality: 'Leave no one behind'; and it focuses on five key areas – people, planet, prosperity, peace, partnership.

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[3] Lavin, J.F.; Montecinos-Pearce, A.A.; 'ESG Disclosure in an Emerging Market: An Empirical Analysis of the Influence of Board Characteristics and Ownership Structure' [2021] 13(19):10498 Sustainability <https://doi.org/10.3390/su131910498> accessed 20 March 2024

[4] 'Transforming our world: the 2030 Agenda for Sustainable Development' (United Nations, 21 October 2015) <https://documents.un.org/doc/undoc/gen/n15/291/89/pdf/n1529189.pdf?token=ap4BtFC0yx3hlW376M&fe=true> accessed 21 March 2024

(A) Attention to People

1. **Goal 1** aims to eradicate extreme poverty in all its forms, everywhere by devising appropriate social protection policies at national, international, and regional levels. It needs to be ensured that everyone, particularly those who are in vulnerable situations, has equal rights to economic resources and access to basic services.

2. Food is one of the essentials of life. **Goal 2** intends to end hunger and ensure access to safe & wholesome food for all. Resilient agricultural practices and sustainable food production systems are to be adopted to secure the nutritional needs of all and, also to fight extreme food price volatility.

3. **Goal 3** aims to secure health and well-being for people of all ages by reducing maternal mortality, infant mortality, accidental deaths, or premature deaths due to non-communicable diseases; and preventing substance abuse, epidemics of communicable diseases. Interestingly, it recognizes the importance of not only physical health but the mental well-being also.

4. **Goal 4** aspires to promote literacy rate and ensure equitable access to quality pre-primary, primary and secondary education for everyone. Gender disparities must be eliminated to promote inclusiveness in education. The youth are the future and they should be given quality learning opportunities including relevant technical and vocational skills for decent employment and entrepreneurship.

5. **Goal 5** targets to achieve gender equality by empowering women and eliminating all forms of violence and discrimination against women.

(B) Attention to Planet

1. Around 2 billion people around the world do not have access to clean water and 672 million people defecate openly.[5] Therefore, **Goal 6** seeks to end open defecation practices and ensure equitable & adequate access to safe drinking water, sanitation and hygiene. It is necessary to implement efficient water-resource management, protect the water bodies and aquatic ecosystems, and minimize water pollution.

[5] '1 in 3 people globally do not have access to safe drinking water – UNICEF' (World Health Organization, 18 June 2019) <www.who.int/news/item/18-06-2019-1-in-3-people-globally-do-not-have-access-to-safe-drinking-water-unicef-who> accessed 21 March 2024

2. To ensure access to affordable, reliable, clean energy; **Goal 7** proposes to increase the production of renewable energy to meet the global energy needs. It also facilitates research & development in associated infrastructure and technology.
3. **Goal 13** urges for implementation of measures to combat climate change and its devastating impacts.
4. **Goal 14** aims to protect & conserve marine ecosystems, prevent unregulated overfishing practices, and minimize the exploitation of marine resources and marine pollution.
5. **Goal 15** ensures to protect the terrestrial ecosystems; and combat deforestation, land desertification and biodiversity loss. It also urges to take action against poaching or illegal trafficking of wild lives.

(C) Attention to Prosperity

1. **Goal 8** aims to secure an inclusive and sustained growth of GDP per capita, generate decent employment opportunities and entrepreneurship with special focus on micro, small & medium-sized businesses; and ensure the protection of labour rights.
2. **Goal 9** promotes the development of resilient regional and cross-border state-of-the-art infrastructure and makes them environmentally sound and sustainable to minimize carbon and greenhouse emissions.
3. **Goal 10** is aimed at reducing the glaring inequalities within and among nations, increasing household income & expenditure with a special focus on the bottom 40% of the population; and adopting appropriate social welfare, wage and migration-related policies.
4. **Goal 11** aspires to ensure safety, inclusiveness and sustainability in cities and human settlements. Some of its key objectives include slum upgradation; access to adequate and affordable housing, transport and basic services; waste management and pollution control.
5. The rising global material footprint indicates that the production and consumption practices are causing depletion of natural resources that put extreme pressure on the environment. **Goal 12** promotes sustainable & efficient use of natural resources and reduces waste generation.

(D) Attention to Peace

1. **Goal 16** aims to provide equal access to justice; reduce all forms of violence, torture & corruption; promote inclusiveness in the society and build effective, transparent & accountable institutions.

(E) Attention to Partnerships

1. **Goal 17** focuses on the importance of strengthening co-operation and partnership in order to accomplish the SDGs. It calls for streamlining global co-operation in terms of finance, trade, technology, capacity building, systemic issues; and alignment of policies & a shared vision.

There are also 169 targets and 247 indicators listed in the framework, amongst which 231 indicators were unique and the remaining 12 indicators were repeated under multiple targets.[6] Thus, collectively the UNSDG provides a universal framework to work collaboratively for a better world.

III. THE AMERICAN APPROACH TO ESG

Historically, in the United States, ESG-related initiatives were voluntary and market-driven. But in recent times, several new initiatives involving mandatory disclosure requirements were coined by the US Securities and Exchange Commission ("**SEC**"), Federal Trade Commission, Financial Stability Oversight Council, and the Comptroller of Currency. The SEC created a Climate & ESG Task Force in 2021 for enforcement of regulations related to environmental, social and governance disclosures. In August 2021, NASDAQ introduced Board Diversity Disclosure Requirements for companies listed on it to have at least one self-identified female and one self-identified unrepresented minority or LGBTQ+ member on the board; or otherwise explain why the company doesn't comply with this diversity criteria.[7] The Inflation Reduction Act was enacted in August 2022, which promotes clean energy by offering significant tax incentives.[8] In July 2023, the SEC brought the disclosure rules about cybersecurity and in September 2023, amended the Investment Company Act to mandate that companies whose names suggest focus on any particular environmental, social or governance factors are adopting

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[6] 'Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development' (United Nations) <https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202021%20refinement_Eng.pdf> accessed 21 March 2024

[7] Tracee Davis, Candace L. Quinn, Seyfarth Shaw, Parmjit Sandhu, Steve Estes, Ruth Tang, 'ESG Data Reliability & Legal Implications of Disclosures' (Bloomberg Law, June 2022) <www.bloomberglaw.com/external/document/XECHNMHK000000/esg-professional-perspective-esg-data-reliability-legal-implicat> accessed 24 March 2024

[8] 'Inflation Reduction Act Guidebook' (The White House) <www.whitehouse.gov/cleanenergy/inflation-reduction-act-guidebook/> accessed 24 March 2024

policies to invest at least 80% of the value of their assets in alignment with such focus.[9]

Except for the above-mentioned key areas, most of the ESG disclosures still remain voluntary. Many organizations have established specific criteria to help businesses navigate through ESG issues. These bodies include the Sustainability Accounting Standards Board (SASB), which takes specific initiatives on important ESG issues in finance. The SASB and the International Integrated Reporting Council (IIRC) recently established the Objective Reporting Foundation (VRF) to develop an integrated reporting framework. The Karan Standards Committee was merged with the VRF to form the International Quality Standards Committee. In addition to that, there are the Global Reporting Initiative (GRI) standards that promote universal standards, and the Task Force on Climate-Related Finance (TCFD) that provides a framework for climate-related financial reporting.

While voluntary disclosures can be made, the risks cannot be considered as less important. Once expectations for ESG disclosure and industry-specific metrics are developed using the SASB standards, the GRI, and the TCFD framework, companies are legally obligated to adhere to those standards. If a company's practices and initiatives standards or practices are inconsistent, it may be subject to fines and other legal proceedings or enforcement actions.

ESG practices at the state level have become highly politicized. In 2022, almost 61% of North American investors have applied ESG criteria in their portfolios.[10] Many large fund managers like BlackRock aggressively supported the integration of ESG into sustainable investing. On the other hand, a strong anti-ESG sentiment also rose which vehemently rejects ESG stating it as a political agenda. According to them, investment decisions must be based on financial prudence to secure the maximum yields, and not any environmental, social or other non-financial irrelevant factors.

While few states are pro-ESG, a significant number of states have started adopting anti-ESG policies and legislation, as discussed below:[11]

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[9] 'SEC Adopts Rule Enhancements to Prevent Misleading or Deceptive Investment Fund Names' (The U.S Securities and Exchange Commission, 20 September 2023) <www.sec.gov/news/press-release/2023-188> accessed 24 March 2024

[10] 'ESG backlash in the US: what implications for corporations and investors?' (Financial Times, 11 June 2023) <www.ft.com/content/3f064321-138c-4c65-bbb9-6abcc92adead>

[11] Leah Malone, Emily Holland, Carolyn Houston, 'ESG Battlegrounds: How the States Are Shaping the Regulatory Landscape in the U.S.' (Harvard Law School Forum on Corporate Governance, 11 March 2023) <https://corpgov.law.harvard.edu/2023/03/11/esg-battlegrounds-how-the-states-are-shaping-the-regulatory-landscape-in-the-u-s/> accessed 26 March 2024

(A) Measures by pro-ESG states

- Illinois: Public Act 101-473 recognizes the vitality of sustainability factors in the overall performance of investment, and mandates prudent integration of sustainability factors in the investment of public funds. The Act provides that any public agency or govt unit managing public funds should publish and implement sustainable investment policies applicable to all the funds which the entity is managing. The investment policy must contain a statement that material & relevant sustainability factors are regularly considered by the entity in its financial and fiduciary vision. Further, every retirement system or pension fund needs to file a copy of the written investment policy to the Department of Insurance within 30 days from the date of adoption of the policy. In the event of changes in the investment policy, again copy of the new policy needs to be filed within 30 days. However, time deposits and processing services of banks, credit unions or financial institutions are exempted from compliance under this Act.[12]
- Maryland: House Bill 740 requires fiduciary of state retirement and pension system to consider climate risk assessment in its investment policy. The Chief Investment Officer has been cast with the obligation to identify new eco-friendly investment opportunities and ensure that investment managers are transitioning towards a more sustainable model.[13]
- Oregon: Oregon State Treasury formally integrated ESG into their investment decisions to ensure sustainable investment of the Oregon Public Employees Retirement Fund. It expressed a long-term commitment to make the transition to a net zero greenhouse emission portfolio.[14]
- Nevada: Nevada State Treasury announced in June 2022 its divestment from companies involved in manufacturing or selling of assault-style weaponry. Currently, any investment of General Portfolio Funds in such companies is prohibited.[15]

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12 PA 101-473 (Illinois), <www.ilga.gov/legislation/publicacts/101/PDF/101-0473.pdf>
13 HB 740 (Maryland), <https://mgaleg.maryland.gov/2022RS/Chapters_noln/CH_24_hb0740t.pdf>
14 'A Pathway to Net Zero' (Oregon State Treasury, 2024) <www.oregon.gov/treasury/Documents/Site-Documentation/Landing-Page-Documents/Sustainable-Investing/OST-Net-Zero-Plan.pdf>
15 'Investment Policy General Portfolio' (Office of The State Treasurer, State of Nevada), IV – D, <www.nevadatreasurer.gov/uploadedFiles/nevadatreasurergov/content/Finances/Investment/General_Fund_Investment_Policy_July_2022_Final.pdf>

- New York: In December 2021, the New York State Teachers' Retirement System announced to cease any further investments in carbon-intensive fossil fuel holdings including oil, gas, and thermal coal reserves.[16]
- Maine: In 2021, the State of Maine enacted a legislation which mandates the state treasury to divest from such holdings and not to further invest in any asset, stock or other securities related to the fossil-fuel industry. The strategic divestment must be completed within 1st January 2026.[17]

(B) Measures by Anti-ESG States

- Idaho: In 2022, Idaho enacted a Senate Bill related to disfavoured investments which prohibits public entities engaged in investment activities from considering ESG factors while selecting potential investments which could override the Idaho Uniform Prudent Investor Act.[18]
- North Dakota: The state of North Dakota went a step further by enacting Senate Bill 2291 which provides that the state investment board should not consider socially responsible investment unless there is a possibility of equivalent or superior return (along with similar time horizon and risk) as compared to similar investment options which are not socially responsible. Moreover, it proposed immediate divestment from such companies which boycott investments in oil, gas, energy or other sectors solely for ESG standards.[19]
- Arizona: The State Treasurer Investment Policy, as adopted on November 2022, lays down that only pecuniary factors are to be considered while making any investment. Non-pecuniary factors including environmental or social goals cannot be the deciding criteria for an investment.[20]
- Florida: The Florida CFO Directive dated 23rd January 2023 expressed a very strong and harsh stance against the concept of ESG. It labelled ESG as 'un-democratic' and 'un-American'; and called the asset managers to divest from ESG funds and sought to achieve the highest rate of return instead of focusing on social

[16] 'NYSTRS Freezes Investments in Top 20 Oil, Gas and Coal Companies, Representing $1 Billion in Holdings; Divests from Thermal Coal' (NYSTRS, 28 December 2021) <www.nystrs.org/NYSTRS/media/PDF/About%20Us/Press%20Releases/2021/NYSTRSClimateAction_12-28-21.pdf>
[17] HP 65 (Maine) <www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0065&item=4&snum=130>
[18] SB 1405 (Idaho) <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2022/legislation/S1405.pdf>
[19] SB 2291 (North Dakota) <https://sos.nd.gov/files/legislation/2291.pdf>
[20] 'Investment Policy Statement' (Arizona State Treasurer's Office) <www.aztreasury.gov/_files/ugd/8bb536_415fda871e864b9ea1fb95fce704874e.pdf>

change. In addition to that, the directive expressed the intent of the Governor and legislative leaders to get rid of ESG in Florida in future.[21]

- Indiana: The Attorney General Opinion dated 1st September 2022 clarified that investing funds of Indiana Public Retirement System on environmental, social or governance goals violates fiduciary duties, and thereby, is prohibited.[22]
- Mississippi: The treasurer issued a letter dated 14th November 2022 to the board members of Public Employees Retirement System, urging them to reject ESG policies stating that such policies were jeopardizing the system and making the state fail to uphold fiduciary duties. Additionally, it openly called to divest funds from BlackRock Inc. because BlackRock's aggressive support for ESG was allegedly driven by political ideology rather than real facts which caused inflation, and generational harm to the economy & leading industries of Mississippi.[23]
- Oklahoma: HB 2034 obligates the state to divest from such financial companies that boycott or discriminate against the fossil fuel industry simply for not aligning with ESG standards.[24]
- Texas[25] and Kentucky[26] also adopted similar anti-ESG legislations in 2021 and 2022 respectively.

IV. ESG THROUGH A EUROPEAN EYE

The political will of the European Union ("**EU**") has welcomed ESG and adopted favourable legislations in alignment with the environmental, social and governance goals.

On 11th December 2019, the European Commission presented an ambitious target in the Green Deal to make Europe completely climate-neutral (no net emissions of greenhouse gases) by 2050; and allocated a budget of €1 trillion to finance the targets of the Green Deal.[27] There are

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[21] Chief Financial Officer Directive (Florida Department of Financial Services, 23 January 2023) <https://www.myfloridacfo.com/docs-sf/cfo-news-libraries/news-documents/2023/cfo-directive--2023-1.pdf?sfvrsn=3868d4f_2#:~:text=WHEREAS%2C%20on%20January%2017%2C%202023,the%20highest%20rate%20of%20return>

[22] Todd Rokita, 'Indiana Public Retirement System and ESG Investments' (Office of the Attorney General, State of Indiana, 1 September 2022) <www.in.gov/attorneygeneral/files/Official-Opinion-2022-3.pdf>

[23] David McRae, 'Treasurer McRae Urges PERS to Reject ESG Policies' (Office of the Mississippi State Treasurer, 14 November 2022) <https://treasury.ms.gov/2022/11/14/treasurer-mcrae-urges-pers-to-reject-esg-policies/#:~:text=Jackson%2C%20MS%20%E2%80%93%20Treasurer%20David%20McRae,of%20PERS%2C%E2%80%9D%20wrote%20McRae.>

[24] HB 2034 (Oklahoma) <www.oklegislature.gov/BillInfo.aspx?Bill=hb2034&Session=2200>

[25] SB 13 (Texas) <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB00013F.HTM>

[26] SB 205 (Kentucky) <https://apps.legislature.ky.gov/record/22rs/sb205.html>

[27] 'The European Green Deal' (European Commission) <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en>

many subsequent legislations and policies adopted to achieve the grand vision of the flagship Green Deal. Some of them are elaborated below:

(A) EU Taxonomy Regulation

The Taxonomy Regulation came into force on 12th July 2020 and it lays down a 'Green List' for sustainable business activities. It outlines the criteria to classify business activities that should be considered sustainable due to their alignment with the net zero goal by 2050. The six criteria provided under Article 9 to be evaluated are –

i. Ability to mitigate climate change

ii. Climate change adaptation

iii. Sustainable use and conservation of marine resources

iv. Shifting to a circular economy

v. Prevention and control of pollution

vi. Protection and conservation of biodiversity and ecosystem.

Companies need to collect additional data from the previous year and disclose to what extent their activities align with the taxonomy regulations. The Disclosures Delegated Act supplements Article 8 of the Taxonomy Regulation and specifies the content and information to be disclosed by financial and non-financial entities including asset managers, credit institutions, investment firms, insurance agencies etc.[28]

(B) Corporate Sustainability Reporting Directive (CSRD)

The European Parliament passed the CSRD in November 2022, which came into force in January 2023 by replacing the previously prevalent Non-Financial Reporting Directive (NFRD). NFRD was in force since 2017, requiring companies to disclose and report certain non-financial performance indicators regarding human rights, treatment of workers, and environmental and social approaches. The NFRD used to be applicable on large companies having more than 500 employees or listed companies. Around 12,000 companies used to be subject of the NFRD regime. However, in pursuant to the grand targets of the EU Green Deal, the European Commission has brought the new CSRD mechanism by dint of which the number of companies increased from 12,000 to almost 50,000; and all of them are required to report such non-financial data relating to ESG issues under the new regime.[29] So, the scope of CSRD

[28] 'The EU Taxonomy Navigator' (European Commission) <https://ec.europa.eu/sustainable-finance-taxonomy/>
[29] Julie Yamamoto, 'Ultimate guide to the EU CSRD ESG regulation for businesses' (OneTrust, 20 April 2023) <www.onetrust.com/blog/ultimate-guide-to-eu-csrd-esg-regulation-for-businesses/>

covers almost four times more companies than the previous NFRD.

The new CSRD applies to –

i. Listed companies

ii. Large companies with 250 employees, and

a) Turnover exceeding €40 million, or

b) Total value of assets exceeding €20 million

iii. Even non-EU companies are subject to CSRD compliance if such companies have at least one subsidiary in the EU and have a net turnover exceeding €150 million.

The disclosure of ESG performance in annual reports fosters transparency, and according to the words of Mr Jozef Síkela, Minister for Industry and Trade, Czech Republic, CSRD will make businesses accountable for their environmental and social impact and also guide towards a sustainable economy that benefits people as well as the environment.[30]

The companies that are subject to CSRD, need to utilize the European Sustainability Reporting Standards (ESRS) while preparing their disclosure report in compliance with CSRD. The ESRS was adopted on 31st July 2023. It follows the 'double materiality' system which means, the company needs to report their impact on people and the environment, as well as how social and environmental phenomenon impacts the company in terms of imposing risks or bringing new opportunities. ESRS outlines 12 sustainability issues to be added to the disclosure report, they include 2 general, 5 environmental, 4 social and 1 governance components.[31]

The penalties for non-compliance of CSRD may vary depending on ratification or enactment of supporting legislation at national level by the member states of EU. However, non-compliance with NFRD used to attract penalties of fine ranging from 50-1500 (in Portugal) to the highest 10 million or 5% of annual turnover or twice the profits gained or losses avoided due to the breach of compliance (in Germany). In addition to that, there used to be provision for imprisonment as well ranging from a minimum of 6 months (in Ireland) to a maximum of 6 years (in Iceland).

So, similar or slightly less stringent (because the number of companies falling under the scope has been increased to include some small or medium-sized businesses too) - penal

[30] ibid

[31] John McGowan, 'European Union Approves Climate/ ESG Reporting Standards' (Forbes, 2 August 2023) <www.forbes.com/sites/jonmcgowan/2023/08/02/european-union-approves-climate-esg-reporting-standards/?sh=47232a1d3f42>

consequences may be expected in case of non-compliance with the new CSRD regime.

(C) Sustainable Finance Disclosure Regulation (SFDR)

The Sustainable Finance Disclosure Regulation was adopted on 14th September 2023 which specifically targets the stakeholders of financial markets and mandates them to disclose sustainability information. It applies to financial market participants (FMPs) who manage funds on behalf of the end investors including banks, asset managers, insurer, investment firms, pension providers etc. This Regulation aims to enhance transparency and sustainability in the financial sector. However, it does not force FMPs to strictly adhere to green criteria while investing, rather it requires them to justify their claims related to their products on sustainability. Thus, it prevents false environmental claims (Greenwashing). Thus it helps conscious investors to make informed decisions and make socially responsible investments.

The SFDR outlines the ESG disclosure requirements at entity levels and product levels too.

Entity-level disclosures include –

- Consideration of sustainability-related risks in investment decision making
- Possible adverse effects on sustainability due to the investment decision
- Remuneration policies in alignment with sustainability objectives.

Product-level disclosures include –

- Description of methodologies taken up for assessment & monitoring.
- Sustainability risks on returns of the product
- Consideration of Principal Adverse Impacts on Sustainability (PAIS)
- Special disclosure for products claiming ESG or sustainability objectives
- Explanation regarding to what extent the underlying product qualifies as sustainable under the Taxonomy Regulation.[32]

(D) Corporate Sustainability Due Diligence Directive (CSDDR)

The European Commission adopted this proposal i.e CSDDD (also known as European Supply Chain Law) on 23rd February 2022 necessitating proactive measures to ensure sustainability in global supply chain management. It provides an outline for due diligence to identify and mitigate adverse effects on human rights, the environment; and ensure good governance.

[32] 'The Sustainable Finance Disclosure Regulation' (PwC) <www.pwc.be/en/challenges/esg/sustainable-finance-disclosure-regulation-sfdr.html>

It would be applicable to –

- Large EU LLCs having more than 500 employees and €150 million annual turnover worldwide.
- Large EU LLCs having more than 250 employees and €40 million annual turnover worldwide and 50% of that turnover has been derived from defined 'High Impact' sectors such as – textiles, mining, agricultural activities etc.
- Non-EU companies having an annual turnover of more than €150 million in the EU according to last financial year.
- Non-EU companies exceeding annual turnover of €40 million in the EU amongst which 50% is generated from 'High Impact' sectors.[33]

It proposes to cast a duty of care on the directors and impose civil liability for non-compliance. The enforcement of this directive is dependent on the adoption and transposition of it into national law by individual member states of the EU.[34]

(E) Anti-ESG wave in Europe

The emergence of anti-ESG sentiment is not only limited to the USA, but spread across the Atlantic in Europe also. Poorly devised ESG framework resulted in unintended consequences. Excessively fast-paced, stringent ESG policies are facing backlash and accusations of "Greenwashing" and being "Too woke." Recently due to the massive farmers' protest, the EU had to dismiss its goal of reducing usage of pesticides by half by 20240. Ultimately, the economy, companies and common people have to pay heavy price for hasty policies set out without any realistic agenda or consideration about the impact.[35]

V. ESG PERSPECTIVES IN INDIA

There is no codified consolidated legislation for all the ESG-related compliances in India, rather it has a plethora of multiple laws for different aspects of environmental, societal or corporate governance matters separately.

Some specific frameworks were implemented which provide guidelines and establish

33 'The EU's Corporate Sustainability Due Diligence Directive' (KPMG) <https://kpmg.com/xx/en/home/insights/2023/02/the-eu-corporate-sustainability-due-diligence-directive.html> accessed on 29 March 2023

34 'Corporate sustainability due diligence' (The European Commission) <https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en> accessed on 29 March 2023

35 Camille Fumard, 'The anti-ESG backlash is not just an American phenomenon as Europe waters down its sustainability agenda' (Fortune, 22 February 2024) <https://fortune.com/europe/2024/02/22/anti-esg-backlash-america-europe-waters-down-sustainability-agenda-environment-politics/>

disclosure mechanism of ESG principles.

(A) National Guidelines on Responsible Business Conduct

In 2011, the Ministry of Corporate Affairs ("**MCA**") refined the previous Corporate Social Responsibility Voluntary Guidelines of 2009, and introduced the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business ("**NVGs**"); which formulated vital guidelines for businesses to operate in a responsible manner ensuring a wholesome and inclusive economic growth. It contained nine principles pertaining to Ethics transparency and accountability, Product life-cycle sustainability, Employee well-being, Stakeholder engagement, Human rights, Environment, Policy advocacy, Inclusive growth and equitable development, and value to customers & consumers.

After that, several international guidelines like the UN Guiding Principles for Business and Human Rights (UNGPs) 2011, UNSDG 2015, Paris Agreement on Climate Change 2015 – showed the path to a sustainable future. As mentioned earlier, it influenced countries to adopt appropriate legislative policies which align with the international framework.

In India, in order to align the previously prevalent NVGs with the SVGs, the SVGs were revised and updated as the National Guidelines on Responsible Business Conduct ("**NGRBC**") in 2019. The NGRBC contains 9 Principles and 8 Annexures. Those principles are at par with the goals of UNSDG.

(B) Business Responsibility and Sustainability Reporting

After the NVGs were released in 2011 by the MCA, the Securities and Exchange Board of India ("SEBI") mandated top 100 listed companies (by market capitalization on BSE and NSE) to disclose certain data in form of Business Responsibility Report ("**BRR**"), regarding their environmental and social initiatives in line with the SVGs. Next when the UNSDG was introduced in 2015, the applicability of BRR was extended to the top 500 listed companies. Then the NGRBC came into picture in 2019; and after that the applicability of BRR was further extended to include top 1000 listed companies.[36]

The MCA constituted a committee to recommend revision of BRR, and that committee came up with a new format – Business Responsibility and Sustainability Reporting ("**BRSR**"). Two formats of reporting were proposed namely – *BRSR Comprehensive* for listed companies and *BRSR Lite* for non-listed companies.

[36] The Institute of Chartered Accountants of India, Business Responsibility and Sustainability Reporting (BRSR), 2021, https://kb.icai.org/pdfs/68851srsb170122.pdf

The format of BRSR includes three sections: Section A (General Disclosure), Section B (Management and Process), Section C (Principle-wise Performance).[37]

This reporting ensures transparency and allows stakeholders, including investors, consumers, and communities, to assess a company's commitment to sustainability and responsible business practices and alignment to NGRBC.

(C) How NGRBC relates to BRSR

The NGRBC is designed to apply to all businesses, irrespective of their ownership, size, sector, structure, ownership, location, size or market capitalization. It consists of nine pillars of Principles, which are interdependent, interrelated, and indivisible. All businesses are urged to holistically address and make their conduct aligned towards the principles enshrined in NGRBC.

BRSR is a reporting format that aims to establish links between a company's financial results with its Environmental Social, and Governance ("**ESG**") performance. The BRSR requirements are based on the NGRBC principles, which mandate that businesses conduct and govern themselves responsibly and report on their ESG performance, the base document behind which the BRSR has evolved is the extant Business Responsibility Report (BRR) and the NGRBC principles. Thus, the BRSR ensures that the conduct of the business is in compliance with NGRBC.

The BRSR Comprehensive reporting is mandatory for the top 1000 listed companies from FY2022-23.

(D) ESG from an African angle

African countries are at an early nascent stage of adopting ESG practices. Several challenges like labour exploitation, poor workplace safety, gender inequality, lack of transparency, high corruption, frequent coup and civil wars – show the extreme urgency of implementing appropriate ESG practices, especially the social and governance components. As far as the environmental component is concerned, it is more difficult and would take longer time; due to the high dependence on mining, minerals and natural resources; and at this time, it is not feasible to invest heavily in production or R&D of clean energy or sustainable source of energy. One key argument frequently presented by the African leaders is that the so-called developed nations exploited the natural resources, utilized fossil fuels and emitted greenhouse gases

[37] Securities and Exchange Board of India, Format for Business Responsibility Report (BRR), Circular CIR/CFD/CMD/10/2015, https://www.sebi.gov.in/sebi_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1_p.PDF

uncontrollably to make themselves developed, but now expect other least-developed countries to stop using fossil fuels and start using clean energy which is very expensive at this point; and this expectation of the developed world is unrealistic, unfair and not feasible unless the developed nations form a sustainable fund to finance the transition towards clean energy in African countries.

1. Nigeria

The National Stock Exchange (NSE) of Nigeria encourages listed companies to report ESG performance in their annual reports voluntarily. In 2019, Sustainability Disclosure Guidelines were released by NSE that provided a framework for reporting sustainability initiatives. However, such disclosure is still voluntary and does not have any binding force. In 2023, the Financial Reporting Council of Nigeria (FRC) launched the Adoption Readiness Working Group (ARWG) casting a duty on it to plan a roadmap for effective implementation of IFRS sustainability disclosure standards. Recently, on January 2024, the ARWG published a draft roadmap on the adoption of IFRS disclosure standards in Nigeria.[38]

The Climate Change Act, and Petroleum Industry Act of 2021 impose some important environmental obligations on both private or public entities, ministries and even the federal government. Then on 2nd February 2022, the Energy Transition Plan was developed by the Federal Executive Council with the objective of achieving net-zero carbon emissions.[39]

2. South Africa

ESG (Environmental, Social, and Governance) issues are increasingly becoming integral to business operations and investment strategies in South Africa. While there is no specific ESG regulations, companies listed on the Johannesburg Stock Exchange (JSE) must comply with general disclosure obligations, often integrating ESG into their annual integrated reports. The JSE introduced the Sustainability Disclosure Guidance and Climate Disclosure Guidance, through which the companies may voluntarily make sustainability disclosures by adopting a double materiality model.

[38] 'ROADMAP REPORT FOR ADOPTION OF IFRS SUSTAINABILITY DISCLOSURE STANDARDS IN NIGERIA (DRAFT)' (ARWG, January 2024) <https://frcnigeria.gov.ng/wp-content/uploads/2024/02/Draft-Roadmap_Report_of_the_Adoption_Readiness_Final_-_February-01-P-1.pdf>

[39] 'ESG 2023' (Chambers and Partners, 29th March 2024) <https://practiceguides.chambers.com/practice-guides/esg-2023/nigeria>

The FTSE/JSE Responsible Investment Index Series and FTSE ESG Ratings incentivize ESG disclosures.[40]

Regulation 28 of the Pension Funds Act links fiduciary duties to considering ESG factors in investment decisions.

3. Egypt

Egyptian businesses are also increasingly focusing on ESG principles. Environmental Law No. 4/1994 is the key legislation ensuring the protection of environment, preservation of natural resources, and reduction of pollution, hazardous waste & industrial emission.[41]

Labour Law No. 12/2003 is the primary legislation governing employment relations, wages, workplace safety, working hours, labour rights, benefits & termination.[42] The law applies to all private sector employers and employees in Egypt, including foreign workers. The Constitution of Egypt, 2014 also guarantees civil rights and access to basic health, education, and housing.

The Companies Law No. 159/1981 regulates the corporate behaviour in Egypt. It also establishes the Egyptian General Authority for Investment and Free Zones (GAFI) as the regulatory body responsible for overseeing the implementation of the law. The Financial Regulatory Authority (FRA) launched supplementary rules in 2016 to ensure transparency and good governance.

VI. CONFRONTING THE CHALLENGES AND WAY FORWARD

The rising awareness and adoption of ESG policies across every part of the world showcases the commitment and goodwill of the international community to secure a sustainable better future for people and the planet. A slow paradigm shift of focus has been observed from CSR to ESG. CSR indicates the philanthropic initiatives which the businesses undertake by spending a certain percentage of their profits. CSR does not focus on the core business activity through which such profit is derived. But, ESG mechanism is deeper since it evaluates the impact of the core business activity and aims to align the business activities towards sustainability.

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[40] Ezra Davids, Ryan Kitcat, Charles Douglus, 'Environmental, Social & Governance Law South Africa 2024' (ICLG, 17 January 2024) <https://iclg.com/practice-areas/environmental-social-and-governance-law/south-africa>

[41] 'Law 4/1994 for the Protection of the Environment' (Ministry of Environment, Arab Republic of Egypt) <www.eeaa.gov.eg/Laws/55/index>

[42] Labour Law 12/2003 (Ministry of Manpower, Arab Republic of Egypt) <www.manpower.gov.eg/PDF/WorkLow/law2003.pdf>

A major concern is that sometimes ESG-related legislations or policies are too far-stretched or unfeasible which may pose heavy burden on the present status of fossil-fuel-based economy, industries, and jobs associated with the same. That is why an anti-ESG movement is also emerging from different parts of the world.

'Greenwashing' is also a key challenge which refers to misleading claims related to a business's sustainability practices without a substantial basis, or superficial compliance just for the sake of alluring investments from socially conscious investors or deceiving the consumers.

Another issue is that disclosure of ESG-related matters is mandated only for a limited number of very large corporations, and medium to small-sized businesses are mostly exempted from such disclosure requirements. This may hinder achieving better and faster outcomes from a sustainability context.

To mitigate the challenges, some innovative measures can be taken into account:

First of all, regulators may consider expanding the scope of mandatory disclosure to include more companies.

Secondly, voluntary disclosures may be incentivized through tax relief, grants, low-interest loan facilities etc, so even the smaller or micro companies feel encouraged to incorporate sustainability practices voluntarily.

Thirdly, it is very important to educate and inform investors, consumers and businesses regarding the long-term benefits of ESG adoption. Awareness campaigns can be organised for this purpose and also to address the anti-ESG concerns. It needs to be clarified that adopting ESG principles in investments and maximizing the financial yield do not necessarily be on opposite poles every time.

Fourthly, carbon pricing scheme can be a very effective mechanism which imposes tax or costs on higher carbon emissions. So directly incentivizes to de-carbonize and minimize emissions.

Fifthly, false or inaccurate sustainability claims should be penalized. Like in South Korea, the penalty is not only limited to administrative or civil liabilities, but may invoke criminal liabilities too. In such cases of Greenwashing, can result in imprisonment upto 2 years.[43]

And finally, policies ensuring due diligence and enhancing transparency in the supply chain (like the CSDDR which is still in the proposal stage in the EU), can be very effective, far-flung solutions in other jurisdictions as well.

[43] 'ESG in APAC: 3 Trends to Watch in 2024' (White and Case) <www.whitecase.com/insight-alert/esg-apac-3-trends-watch-2024> accessed on 30 March 2024

VII. CONCLUSION

ESG secures sustainable investment and pushes businesses to operate in a socially and environmentally responsible manner ensuring good corporate governance.

Undoubtedly, the emergence of ESG principles has been a very necessary global phenomenon for a smooth transition towards a sustainable future. But financially illiterate environmental activism won't bring any fruitful results. Strong regulatory frameworks are indeed required but they must delicately consider the immediate impact, feasibility, and alternate paths with minimum friction. The journey towards sustainability should be in the form of collective collaboration, not coercion.

Singapore, Hong Kong, New Zealand are at the forefront of advanced ESG regulatory frameworks with mandated requirements on corporations as well as investors. In the United States, the majority of ESG disclosures are voluntary in nature. The lack of federal legislations has led to multiple state-level regulations conflicting with each other. Strong anti-ESG ego is on the rise. Africa is at a very nascent stage of incorporating ESG principles but has promising potential. Although Europe has started ESG journey very recently, it has executed some of exceptionally well-crafted policies like CSRD, SFDR etc which may influence other jurisdictions too.

ESG policies not only make businesses sustainable but enable them to effectively assist in mitigating societal or environmental threats.

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