THE IMPORTANCE OF "ESG" AND ITS APPLICATION IN INDIA

Esha Gupta & Adityan Rangaswamy

ABSTRACT

Environmental, Social and Governance ***("ESG")*** *is a set of criteria that is used by environmentally conscious investors for understanding the sustainability of their potential investments. In the first part of the paper, we have analysed the current scenario of ESG in India. There is an increase in the awareness regarding the importance of the environmental and sustainable investments. It is extremely important for all companies to incorporate ESG into their framework. To demonstrate the significance of ESG, we have discussed the adverse environmental impacts that can effect businesses. Further, we have also demonstrated how incorporating ESG principles can help in earning profits in the long run. At present, India has not incorporated ESG into its laws and legislations that govern companies. However, there has been a shift towards more environmentally friendly business practices in the recent years. In the second part of the paper, we have critically analysed how the EU has taken steps to incorporate ESG. The EU, although it has not implemented any legislations, has taken steps to incorporate ESG practices into their economy. The EU has made an Action Plan, with intentions to incorporate an EU taxonomy, EU ECO labels, EU Green Bond standards and other tools to ensure that ESG practices are effectively implemented. The article will discuss which of these tools can be used and how they can be incorporated in the Indian markets.*

Keywords: Environmental, Social, Governance, European Union.

1. Has India paid appropriate attention to "ESG", i.e., "Environment, Social & Governance"? If not, is it needed?

1.1 Introduction to ESG:

"Environmental, Social and Governance" ("ESG") refers to a set of criteria to determine how a company performs in preserving the natural environment, managing relationships with its stakeholders and also how it deals with matters including the company's leadership, internal controls and shareholder's rights.[1] These standards are used by socially and environmentally conscious investors to screen their potential investments.[2] This approach incorporates "Environmental, Social and Governance" factors into the company's investment analysis and decision-making.[3] By taking these factors into consideration, there is an increase in the qualitative impact of the business rather than a mere quantitative one.[4] Every company should therefore follow responsible business practices by incorporating ESG into their framework.[5]

1.2 The importance of incorporating principles of ESG:

ESG regulations are progressively defining the way in which companies should conduct their business operations.[6] With the increase of health and economic risks, environmental sensitivity is on the rise.[7] ESG has now moved from a vague concept to a business and investing priority.[8] It helps to improve the quality and value of business operations conducted by companies.[9] Despite the initial financial costs that a company may have to bear, there are higher economic returns in the long run

[1] Seeking Growth The ESG Way, Edelweissfin.com, https://www.edelweissfin.com/documents/30595/0/Seeking%20Growth%20The%20ESG%20Way.pdf (last visited Apr 8, 2020).

[2] James Chen & Gordon Scott, Environmental, Social, and Governance (ESG) Criteria Investopedia (2020), https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp (last visited Apr 8, 2020).

[3] *Supra* note 1.
[4] *Id.*
[5] Environmental, Social and Governance, Ml-india (2020), https://www.ml-india.com/environmentalandsocial.html (last visited Apr 8, 2020).

[6] *Supra* note 1.
[7] *Id.*
[8] *Id.*
[9] *Id.*

for both, the company and its investors.[10] Companies should not disregard ESG as it could lead to massive financial implications, along with the loss of public trust in the process.[11] They could face several ESG related risks including physical risks such as the destruction to their infrastructure and property caused by natural calamities, thus increasing financial risks in the form of losses and liabilities.[12] They may also be charged with negligence suits due to the non-compliance of environmental and social laws.[13] At last, their reputation could be put at risk in case of any of the above situations.[14] Thus, incorporating ESG into the company's corporate structure is of utmost importance.

At present, it is imperative for companies to adhere to ESG regulations to reduce the stark rise in the environmental and social risks across the globe[15]. Amongst these risks, the Global Climate Change has proved to be one of the biggest risks for several companies and businesses[16]. The frequency and gravity of extreme weather conditions leading to natural disasters has also drastically increased as a result. According to the "Brown to Green Report, 2019", India is amongst the top 5 countries within the G20 nations, to incur economic losses due to extreme weather conditions[17]. A report stated that "Kerala experienced one of the worst floods in its history, causing estimated losses of USD 4.25 billion" and that "the floods in Bihar affected 7.2 million people and severely affected agricultural activity, destroyed infrastructure and property"[18]. The adverse impact of such disasters has only been growing with time due to negligence by companies and the lack of necessary regulations implemented by authorities[19]. From rising sea levels to droughts, India has faced several kinds of natural disasters due to climate change[20]. There is serious cause for concern as it was

---

10 *Id.*
11 Chandan Bhavnani & Arnesh Sharma, ESG Investing Scenario in India (2019), https://www.yesbank.in/pdf/esg_investing_scenario_in_India (last visited Apr 8, 2020).

12 *Id.*
13 *Supra* note 11.
14 *Id.*
15 *Id.*
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 Navneet Munot, India and the ESG Challenge CFA Institute Enterprising Investor (2019), https://blogs.cfainstitute.org/investor/2019/10/21/india-and-the-esg-challenge/ (last visited Apr 8, 2020).

reported that nine of the ten most polluted cities in the world belong to India[21]. Fortunately, Governments across the globe are now starting to pay more attention to tackle the issue of Global Warming[22].

1.3 ESG in India:

Although Indian companies and investors are becoming increasingly conscious, it is still early days for ESG in India[23]. "Environmental and Social Reporting" in India was known to be negligent in the past[24]. Eventually, the Indian Government decided to create a suitable "Policy Framework" in order to increase the amount of sustainability reporting conducted by Indian companies[25]. The "Ministry of Corporate Affairs" (MCA) released the "Voluntary Guidelines" on "Corporate Social Responsibility" (CSR), which in 2011, became the "National Voluntary Guidelines" (NVG) on "Social, Environmental & Economic Responsibilities of Business"[26]. The NVG consisted of nine principles that represented the "Long-Term Sustainable Value" (LTSV) of Indian companies[27]. LTSV has now been given more importance than the pursuit of financial profits[28]. This approach helps companies to predict the several environmental and social risks that they may face so that they can inform their stakeholders on how they plan on assessing and tackling these risks[29]. The Stakeholders place their reliance on the company's environmental and social reporting to ensure that its activities aim to enhance the LTSV[30]. In 2012, there was a transition from voluntariness to a regulatory mandate, which was issued by the "Securities and Exchange Board of India" (SEBI), making it compulsory for the "top 100 listed companies based on market capitalisation" to release "Business Responsibility Reports" (BRR) along with their annual company reports[31][32]. This would

[21] *Id.*
[22] *Id.*
[23] *Supra* note 1.
[24] Umakanth Varrottil, Environmental and Social Reporting by Indian Companies (2019), https://archives.nseindia.com/research/content/QB_January_2019.pdf (last visited Apr 8, 2020).

[25] *Supra* note 24.
[26] *Supra* note 24.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] SEBI | Business Responsibility Reports, Sebi.gov.in (2012), https://www.sebi.gov.in/legal/circulars/aug-2012/business-responsibility-reports_23245.html (last visited May 6, 2020).

provide the stakeholders with disclosures about the adherence to the NVG principles[33]. In 2015, SEBI mandated that BRR was to be released by the "top 500 companies by market capitalisation", thus expanding the overall applicability of BRR[34]. In 2017, SEBI created a system by which these companies could voluntarily adopt integrated reporting that would give stakeholders all the essential financial and non-financial information, guaranteeing a transparent mode of communication regarding the company's strategy, governance and performance[35][36]. Furthermore, in the same year, in a circular, the SEBI laid down disclosure requirements for "issuing and listing green debt securities".[37] In this circular they have defined projects/ assets for which green debt instruments can be used to raise funds.[38] It also provides for continuous reporting requirements, which the companies cannot escape from.[39] Lastly, in 2020, the SEBI proposed to replace the BRR with "Business Responsibility and Sustainability Report" to encourage companies to report on not only their financial compliances, but also the environmental and social impacts of their businesses.[40] This revised format for reporting would be done on a voluntary basis for the "top 1000 companies by market capitalisation" in the financial year 2020-21 and thereafter made mandatory.[41]

We can notice that the regulatory framework has been strengthened over the years[42]. It went from being voluntary to a compulsory requirement for larger companies, according to their market capitalisation[43]. This has resulted in a significant rise in the quality and quantity of "Environmental

---

[33] *Supra* note 24.
[34] *Id.*
[35] *Supra* note 24.
[36] SEBI | Integrated Reporting by Listed Entities, Sebi.gov.in (2017), https://www.sebi.gov.in/legal/circulars/feb-2017/integrated-reporting-by-listed-entities_34136.html (last visited May 6, 2020).
[37] SEBI | Disclosure Requirements for Issuance and Listing of Green Debt Securities, Sebi.gov.in, https://www.sebi.gov.in/legal/circulars/may-2017/disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_34988.html (last visited Mar 9, 2021).

[38] *Id.*
[39] *Supra* note 37.
[40] SEBI | Consultation Paper on the format for Business Responsibility and Sustainability Reporting, Sebi.gov.in, https://www.sebi.gov.in/reports-and-statistics/reports/aug-2020/consultation-paper-on-the-format-for-business-responsibility-and-sustainability-reporting_47345.html (last visited Mar 9, 2021).

[41] *Id.*
[42] *Supra* note 24.
[43] *Supra* note 24.

and Social Reporting" by many companies[44]. There was also a greater focus on environmental issues in the company reports[45]. It was reported that "In India, 87% of the reporting provisions dealt with environmental issues, while 35% dealt with social issues and 32% with governance issues"[46]. Key subjects included the management of pollution, water, waste and other essential resources[47]. But this rapid change in the policies has led to some uncertainty, leading to poor and uncomprehensive reporting by companies[48]. Some companies also start misusing sustainability reporting as a tool to improve public relations, leading to the issue of Green washing[49]. There is evidence to show that the top management of several companies do not consider reporting as a priority[50]. Finally, there needs to be a greater nexus between environmental social reporting and CSR[51]. Environmental and Social Reporting encompasses overall sustainability, whereas CSR under "The Companies Act, 2013"[52] narrowly concentrates on "Corporate Philanthropy"[53]. There is a huge difference between the two and sustainability should not be reduced to mere philanthropy[54].

1.4 The "Environment" as an essential stakeholder:

A major issue is that the Environment is often neglected as an important Stakeholder of a company. This negligence by companies can lead to Agency Problems. An agency problem takes place when the well-being of a party, i.e. the "Principal", is dependent on the acts of another party, i.e. the "Agent"[55]. This is seen to be a problem as the Agent has to be motivated to act in the interest of the Principle, rather than its own interest[56]. Out of the three Agency Problems, the third kind of agency problem is applicable in this case. It arises when there is a conflict within the firm itself, between the

[44] *Id.*

[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Supra* note 24.
[52] The Companies Act, 2013, No. 18, Acts of Parliament, 2013. (India)
[53] *Supra* note 24.
[54] *Id.*
[55] John Armour, Henry Hansmann & Reinier Kraakman, Agency Problems, Legal Strategies and Enforcement 3,4 (2009), http://ssrn.com/abstract=1436555. (last visited Apr 30, 2020).

[56] *Id.*

owners and all of its stakeholders, such as creditors, employees and customers[57]. The struggle is to make sure that the company does not act opportunistically towards these stakeholders and works only in their best interest[58]. We can clearly see that the environment is often overlooked as a stakeholder of a company. The disclosures by companies should not only benefit the shareholders, but also other stakeholders such as the environment and the community as a whole[59]. The Stakeholder theory states that the company owes a fiduciary duty towards all of its stakeholders as they all have an interest in the firms' actions and decisions[60]. Their interests are to be considered before conducting business operations due to the impact that it may have on them[61]. The firm must adopt appropriate policies to deal with all of its primary stakeholders, including the environment[62]. Companies should treat the environment as an essential Stakeholder to prevent irreparable damage, leading to all sorts of risks and damages for the company in the long run. Preserving the environment should be a priority to ensure long term sustainability and profits.

1.5 The benefits of implementing ESG principles:

There has been an increase in the awareness regarding ESG issues, driving investors towards sustainability-oriented investments[63]. The intervention of these investors has forced several companies such as "Nike" to improve its supply chain and "Volkswagen" to follow the mandated emission norms[64]. There is strong research evidence to show that ESG investing provides better returns as companies with a higher "Sustainability Rating" are less risky to invest in due to their

---

57 *Id.*

58 *Supra* note 55.
59 *Supra* note 24.
60 Ventsislava Nikolova & Sanela Arsić, THE STAKEHOLDER APPROACH IN CORPORATE SOCIAL RESPONSIBILITY (2017), https://menadzment.tfbor.bg.ac.rs/english/wp-content/uploads/sites/2/2017/02/3_1_24-35.pdf (last visited Apr 8, 2020).

61 *Id.*
62 *Id.*
63 Shailesh Menon & Rajesh Mascarenhas, Indian companies not adhering to environment guidelines could be snubbed by global investors The Economic Times (2016), https://economictimes.indiatimes.com/news/economy/finance/indian-companies-not-adhering-to-environment-guidelines-could-be-snubbed-by-global-investors/articleshow/55080383.cms?from=mdr (last visited Apr 8, 2020).

64 *Supra* note 63.

superior operational performance[65]. With the increasing importance of ESG in India, investors will not only get a higher return in the long run, but there will also be a huge positive impact on the environment. Problems of extreme climate change leading to natural disasters can be prevented, which can greatly lower environmental and social risks. There will also be a rise in Sustainable Finance, which includes financial services that integrate ESG criterion into their business and investing decisions, which benefits both, the investors and the environment at large[66]. It promotes sustainable development, economic efficiency and contributes to improving and restoring the ecological systems[67].

1.6 Conclusion:

In conclusion, we can see that India has not paid appropriate attention to ESG. Although India does not have sufficient ESG related legislations, ESG has been gaining importance and recognition by several Indian investors and companies. This is due to several factors such as Global Warming and other natural disasters caused due to extreme weather conditions, adversely affecting all the Stakeholders. In the past, there used to exist extremely lax and voluntary ESG guidelines issued by the authorities, but over the years, SEBI has strengthened the regulatory framework[68]. These guidelines give more emphasis to the "Long Term Sustainable Value" of companies than the mere financial profits that they make[69]. LTSV helps to boost investor confidence, thus leading to higher investments in companies that are ESG friendly and incorporate it into their corporate structure. In order to make an actual difference, this should be incorporated by all companies, irrespective of their size or market capitalisation. Although the attention paid to ESG by Indian companies is on the rise, it is still not sufficient. A possible solution would be to include ESG related regulations in the Indian Companies Act, 2013[70], to give ESG the importance and enforcement mechanisms that it

---

[65] Kiran Somvanshi, Why India is turning into ESG funding hotspot The Economic Times (2019), https://economictimes.indiatimes.com/markets/stocks/news/why-india-is-turning-into-esg-funding-hotspot/articleshow/67938722.cms?from=mdr (last visited Apr 8, 2020).

[66] What is Sustainable Finance - Swiss Sustainable Finance, Swiss Sustainable Finance, https://www.sustainablefinance.ch/en/what-is-sustainable-finance-_content---1--1055.html (last visited Apr 8, 2020).

[67] *Id.*

[68] *Supra* note 24.
[69] *Id.*
[70] *Supra* note 52.

requires in order to reduce the environmental and social risks that India is currently facing. The European Union (EU) was one of the first to recognise the importance of ESG and to take steps to incorporate it into its legislations. To understand the steps that can be taken by India, an analysis of the EU legislations needs to take place. This will be done in the second part of the essay. We should never overlook the Environment as a Stakeholder as it is greatly impacted by the actions of companies and individuals. Everyone has to become more environment-conscious and companies becoming ESG friendly or "Green" is a great step towards that.

2. How does India compare to the EU with regards to ESG? Does it need stricter regulations? If yes, how can it be incorporated into India?

2.1 Introduction:

India, at present, does not have any mandatory legislations or regulations put in place regarding ESG for companies, except those in the top 1000 by market capitalisation[71]. In the European Union, the Parliament has taken some action to make ESG a central part of its economy. Through this essay, there will be a comparative analysis between the current scenario in India and the EU. This will help to understand to what extent India can incorporate the EU's legislations on ESG and how it can be implemented in India.

LEXFORTI

2.2 ESG in the European Union (EU):

In the European Union, an Action plan on sustainable financing has been developed by the European Commission[72]. The Commission defines sustainable financing as "the process of taking into account environmental and social considerations in investment decision-making, leading to increased investments in long-term and sustainable activities", which includes ESG investing[73].The objective of the EU Action Plan is to create a regulatory framework to assist and boost sustainable

---

[71] *Supra* note 40.

[72] European Comission, Sustainable finance: Commission's Action Plan for a greener and cleaner economy (2018), https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1404 (last visited Apr 8, 2020).

[73] Cenzi Gargaro, Karsten Wöckener & Mindy Hauman, EU Sustainable Finance Regulation | White & Case LLP Whitecase.com (2019), https://www.whitecase.com/publications/alert/eu-sustainable-finance-regulation (last visited Apr 8, 2020).

investing in the EU[74]. The intention of the Commission is to create an EU framework that instils environmental, social and governance factors into Europe's economy to make it a greener and more efficient one[75].

A High-Level Expert Group ("HLEG") on sustainable finance was appointed by The European commission which, in its final report, stated that there is a need to increase the finance of sustainable growth, which can be done, "by funding society's long-term needs and to also strengthen financial stability by incorporating ESG factors into investment decision-making" [76] . The commission also proposed the development of a unified EU classification system, also known as the EU taxonomy, the creation of EU ECO labels and establishment of the green bond standard[77].

The EU taxonomy aims to clarify what activities are considered as 'sustainable'[78]. This taxonomy will be used as the basis of many of the other aspects of the EU action plan, such as ECO labels[79]. This classification will help investors and stakeholders to gauge how much of a company's earnings are from sustainable activities[80]. The use of the EU Taxonomy will be voluntary[81]. But even though it will be voluntary, it is expected that it will have a high degree of participation, as it helps to provide companies financial instruments with sustainable credentials, which helps investors and stakeholders[82]. Due to the difficulties in creating such a classification system, developing a fully functional EU sustainability taxonomy which will cover social, climate and environmental aspects will take time[83]. Therefore, the Commission has chosen a "step-by-step approach, starting with a taxonomy on climate change mitigation and some environmental activities" [84]. After this, the taxonomy will cover the remaining aspects[85]. The EU Taxonomy regulations came into force on

---

[74] *Id.*
[75] *Id.*
[76] Communication from The Commission to The European Parliament, The European Council, The Council, The European Central Bank, The European Economic and Social Committee and the Committee of the Regions Action Plan: Financing Sustainable Growth, Eur-lex.europa.eu (2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0097 (last visited Apr 8, 2020).
[77] *Supra* note 76.
[78] *Id.*
[79] *Supra* note 73.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Supra* note 76.
[84] *Id.*
[85] *Id.*

12th July 2020.[86] Along with the Taxonomy, companies will have to submit two additional reporting requirements, namely the Non- Financial reporting directive and the Sustainable finance disclosure regulation.[87] These reporting regulations help to further the aim of encouraging sustainable investing and ensures that companies have transparency to the investors regarding their activities.

The EU Taxonomy can help to understand "what proportion of a company's revenues are from sustainable activities"[88]. Based on how "green" the activities are, ECO labels are given to companies[89]. The EU Taxonomy, along with the EU ECO label, sets the thresholds that a company needs to follow for it to be compliant with ESG practices[90]. A company would be deemed 'green' or 'sustainable' when its activities are above the given threshold[91]. EU standards and labels would protect the trust in the sustainable financial market[92]. It would also allow easier access for investors who are interested in those products[93].

Another measure to be introduced through the EU action plan is the EU Green Bond Standard (GBS)[94]. At present, when an issuer floats a green bond, there are no regulations which require the issuer to specify the "green" purpose of floating the bond and there is no periodic reporting requirement[95]. The EU GBS is a regulation regarding the prospectus that will include assistance on a green bond standard[96]. The EU Taxonomy will be linked to the EU GBS[97]. The absence of

---

86 EU taxonomy for sustainable activities, European Commission - European Commission, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_en (last visited Mar 9, 2021).

87 EU Taxonomy Regulation, EY, https://www.ey.com/en_lu/wealth-asset-management/luxembourg-market-pulse/eu-taxonomy-regulation#:~:text=The%20EU%20Taxonomy%20Regulation%20is,European%20Commission%20in%20March%202018. (last visited Mar 9, 2021).

88 *Supra* note 73.
89 *Id.*
90 *Id.*
91 *Supra* note 73.
92 *Supra* note 76.
93 *Id.*
94 *Supra* note 73.
95 *Id.*
96 *Id.*
97 *Id.*

mandatory regulation with regards to information published in the prospectus will increase the risk of 'greenwashing'[98]. Issuers would then not be required to ensure that green bonds remain green, nor would it require issuers to regularly communicate information to the investors[99]. Thus, it has been recommended that the EU GBS becomes an integral part of the issuance of green bonds[100].

The EU has put new regulations in place, apart from the EU action plan such as the EU NFI Directive which is applicable for large companies, which lays down descriptions of a company's ESG policies, impact of those policies, risks related to not having ESG etc[101]. Credit rating agencies are also now offering sustainable rating indicators to ESG investors. This is done to ensure more transparency in a company's sustainable and unsustainable activities[102]. Lastly, the European Securities and Markets Authority has set out proposals requiring the inclusion of sustainability risks into investment decisions[103] , which was then promulgated into a draft legislation[104].

The EU Action Plan was created with the intention to ensure more transparency, which will increase the availability of information on sustainability risks, which in turn will create better investments for investors[105]. Through the EU Action Plan a framework will be created whereby funds, issuers and managers will have to show the sustainability of their products and services to the investors[106].

---

98 *Id.*
99 *Id.*
100 *Id.*
101 Directive 2014/95/EU of The European Parliament and of The Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, Eur-lex.europa.eu (2014), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0095&from=EN (last visited Apr 8, 2020).
102 *Supra* note 68.
103 Consultation Paper On integrating sustainability risks and factors in MiFID II, Esma.europa.eu (2018), https://www.esma.europa.eu/sites/default/files/library/2018-esma35-43-1210-_ipisc_cp_mifid_ii_sustainability.pdf (last visited Apr 8, 2020).
104 Commission Delegated Regulation (EU) …/... of XXX amending Delegated Regulation (EU) 2017/565 as regards the integration of Environmental, Social and Governance (ESG) considerations and preferences into the investment advice and portfolio management (DRAFT), Ec.europa.eu (2018), https://ec.europa.eu/finance/docs/level-2-measures/mifid-delegated-act-2018_en.pdf (last visited Apr 8, 2020).
105 European Union, Sustainable finance: Making the financial sector a powerful actor in fighting climate change (2018), https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3729 (last visited Apr 8, 2020).
106 *Id.*

Under the EU Action Plan, institutional investors also must show reports to their clients and stakeholders on how they plan on integrating ESG into their decisions[107].

2.3 Comparative analysis of India and the EU with respect to ESG:

When comparing the India and the EU, with respect to ESG, the EU has introduced regulations and reporting requirements to ensure that it can combat climate change and bring about sustainable financing. In India, in 2017, the SEBI released a circular which related to the disclosure requirement for issuing and listing of "green debt securities".[108] In 2020, it released the proposal for the BRSR, which is a type of ESG reporting, only requires the top 1000 companies by market capitalization to disclose certain sustainability factors.[109] But it must be noted that these are only disclosure requirements to bring about transparency to the investors. They are still vague and do not law down a standard by which a company's activities can be considered to be "green" and "sustainable". The current mechanisms only focus on companies disclosing their sustainable activities, but do not do much to encourage the incorporation of ESG criteria into the companies. Now, with the rise in ESG investing, the lack of regulation and governance in the field will discourage investors from entering the Indian markets. It is important for the Indian Legislation to pass laws on ESG, as it could be a huge source of finance into the country and will also help to promote a sense of sustainability among companies. This will help the economy and environment in the long term.

In India, there is an absence of legislations when it comes to the field of ESG. By looking at the EU, India too can incorporate similar regulations to improve ESG investing in India. Firstly, a team of environmental and financing experts must be made to understand the present condition of ESG and sustainable financing in India. Then, like the EU taxonomy, India too must develop a standard or formula by which a company's "sustainability" can be determined. This should be the basic building block for any other regulation that might be promulgated by India. Only through this, can there be transparency for investors and stakeholders regarding the activities of the company.

---

[107] *Id.*
[108] *Supra* note 37.
[109] *Supra* note 40.

2.4 How ESG principles can be incorporated in India:

In India, a major problem is over regulation. In the Ease of doing business index made by the World Bank, India was ranked 63[110]. This ranking system took into account aspects of business regulation and practice[111]. In order to prevent this, the first step that can be taken is that ESG firms should be recognized under the Indian Companies Act, 2013. The increase in awareness of ESG and the rise in the number of ESG firms, will give rise to a new type of Company. These ESG firms will have their own type of "green" shares and will have different prospectus requirements. Rather than creating new ESG regulations, which is the cause of over-regulation, they should be incorporated into the already existing laws. This would help to ensure that ESG companies do not need to undergo any unnecessary legal and compliance requirements. This also ensures that all the safeguards already present in the Indian Companies Act,2013 apply to these new types of companies. It is true that ESG companies need to be put under a higher degree of scrutiny, but regulations need not be so diverse that it does not allow for any ESG firms to develop in the country. By incorporating it into the Companies Act, 2013, it helps to ensure recognition of such companies, while regulating them. Another step that needs to be taken is the creation of an ESG committee. In India, it is well known that even though the laws may be good on paper, improper implementation is prevalent in all fields. This can lead to more harm than good. So, in order to combat this, a specialized ESG committee needs to be created which will ensure proper implementation of future ESG legislations. Beyond these, incentives should be given such as tax deduction, to encourage companies to comply with ESG regulations as it also encourages companies to shift from brown and unsustainable assets to green sustainable assets such as- clean energy, waste management etc. This not only helps in improving the economy, but also the environment.

Therefore, we can see that the EU has taken some steps towards inclusion of ESG into a part of its markets. Through the EU Action Plan, EU taxonomy, EU GBS and other such policies, the EU has taken into account the importance of ESG. While comparing India to the EU, it can be seen that in India, there is a lack of regulations and policies, due to which, India has been losing out in a market that could potentially be a large source of finance. India should move towards putting forward

[110] Bank, W., 2019. *Doing Business 2020*. Washington, D.C.: World Bank Publications, p.4.
[111] *Id.*

regulations for ESG as it would allow for transparency of sustainability risks, encouraging investors to invest in the Indian markets. An effective method that India can adopt to introduce ESG investing, is by first developing a standard whereby a company can be considered "green" and then introducing ESG related legislations into the Indian Companies Act, 2013. This will ensure that ESG is easily introduced into the economy and these firms are not subjected to over regulation. ESG norms will help to improve not only the economy but help to resolve issues such as climate change, global warming and green washing.

2.5 Conclusion:

In conclusion, we can see that ESG practices are important for the long term sustainability of a company. Incorporating ESG practices is essential for a company fulfil the interests of all its stakeholders. Unfortunately, India at present does not have any regulations regarding ESG. It has however taken some regulatory steps to treat the environment as a priority stakeholder during the dealings of companies. On the other hand, it can be seen that the EU has already taken several steps towards incorporating ESG into their framework. Some of these steps include the EU taxonomy, EU green bond standard, ECO labels etc. These tools can also be helpful in the Indian context but cannot be directly incorporated into the Indian markets. India can introduce a "Green" standard and can incorporate ESG into its already existing laws. This will ensure smooth inclusion of ESG into the Indian economy.

REFERENCES

1. Seeking Growth The ESG Way, Edelweissfin.com, https://www.edelweissfin.com/documents/30595/0/Seeking%20Growth%20The%20ESG%20Way.pdf (last visited Apr 8, 2020).

2. James Chen & Gordon Scott, Environmental, Social, and Governance (ESG) Criteria Investopedia (2020), https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp (last visited Apr 8, 2020).

3. Environmental, Social and Governance, Ml-india (2020), https://www.ml-india.com/environmentalandsocial.html (last visited Apr 8, 2020).

4. Chandan Bhavnani & Arnesh Sharma, ESG Investing Scenario in India (2019), https://www.yesbank.in/pdf/esg_investing_scenario_in_India (last visited Apr 8, 2020).

5. Navneet Munot, India and the ESG Challenge CFA Institute Enterprising Investor (2019), https://blogs.cfainstitute.org/investor/2019/10/21/india-and-the-esg-challenge/ (last visited Apr 8, 2020).

6. Umakanth Varrottil, Environmental and Social Reporting by Indian Companies (2019), https://archives.nseindia.com/research/content/QB_January_2019.pdf (last visited Apr 8, 2020).

7. SEBI | Business Responsibility Reports, Sebi.gov.in (2012), https://www.sebi.gov.in/legal/circulars/aug-2012/business-responsibility-reports_23245.html (last visited May 6, 2020).

8. SEBI | Integrated Reporting by Listed Entities, Sebi.gov.in (2017), https://www.sebi.gov.in/legal/circulars/feb-2017/integrated-reporting-by-listed-entities_34136.html (last visited May 6, 2020).

9. John Armour, Henry Hansmann & Reinier Kraakman, Agency Problems, Legal Strategies and Enforcement 3,4 (2009), http://ssrn.com/abstract=1436555. (last visited Apr 30, 2020).

10. Ventsislava Nikolova & Sanela Arsić, THE STAKEHOLDER APPROACH IN CORPORATE SOCIAL RESPONSIBILITY (2017),

https://menadzment.tfbor.bg.ac.rs/english/wp-content/uploads/sites/2/2017/02/3_1_24-35.pdf (last visited Apr 8, 2020).

11. Shailesh Menon & Rajesh Mascarenhas, Indian companies not adhering to environment guidelines could be snubbed by global investors The Economic Times (2016), https://economictimes.indiatimes.com/news/economy/finance/indian-companies-not-adhering-to-environment-guidelines-could-be-snubbed-by-global-investors/articleshow/55080383.cms?from=mdr (last visited Apr 8, 2020).

12. Kiran Somvanshi, Why India is turning into ESG funding hotspot The Economic Times (2019), https://economictimes.indiatimes.com/markets/stocks/news/why-india-is-turning-into-esg-funding-hotspot/articleshow/67938722.cms?from=mdr (last visited Apr 8, 2020).

13. What is Sustainable Finance - Swiss Sustainable Finance, Swiss Sustainable Finance, https://www.sustainablefinance.ch/en/what-is-sustainable-finance-_content---1--1055.html (last visited Apr 8, 2020).

14. The Companies Act, 2013, No. 18, Acts of Parliament, 2013. (India)

15. European Comission, Sustainable finance: Commission's Action Plan for a greener and cleaner economy (2018), https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1404 (last visited Apr 8, 2020).

16. 1 Cenzi Gargaro, Karsten Wöckener & Mindy Hauman, EU Sustainable Finance Regulation | White & Case LLP Whitecase.com (2019),

17. https://www.whitecase.com/publications/alert/eu-sustainable-finance-regulation (last visited Apr 8, 2020).

18. Communication from The Commission to The European Parliament, The European Council, The Council, The European Central Bank, The European Economic and Social Committee and the Committee of the Regions Action Plan: Financing Sustainable Growth, Eur-lex.europa.eu (2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0097 (last visited Apr 8, 2020).

19. Directive 2014/95/EU of The European Parliament and of The Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, Eur-lex.europa.eu (2014), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0095&from=EN (last visited Apr 8, 2020).

20. Consultation Paper On integrating sustainability risks and factors in MiFID II, Esma.europa.eu (2018), https://www.esma.europa.eu/sites/default/files/library/2018-esma35-43-1210-_ipisc_cp_mifid_ii_sustainability.pdf (last visited Apr 8, 2020).

21. Commission Delegated Regulation (EU) …/... of XXX amending Delegated Regulation (EU) 2017/565 as regards the integration of Environmental, Social and Governance (ESG) considerations and preferences into the investment advice and portfolio management (DRAFT), Ec.europa.eu (2018), https://ec.europa.eu/finance/docs/level-2-measures/mifid-delegated-act-2018_en.pdf (last visited Apr 8, 2020).

22. European Union, Sustainable finance: Making the financial sector a powerful actor in fighting climate change (2018),

23. https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3729 (last visited Apr 8, 2020).

24. Bank, W., 2019. Doing Business 2020. Washington, D.C.: World Bank Publications.

25. SEBI | Disclosure Requirements for Issuance and Listing of Green Debt Securities, Sebi.gov.in, https://www.sebi.gov.in/legal/circulars/may-2017/disclosure-requirements-for-issuance-and-listing-of-green-debt-securities_34988.html (last visited Mar 9, 2021).

26. SEBI | Consultation Paper on the format for Business Responsibility and Sustainability Reporting, Sebi.gov.in, https://www.sebi.gov.in/reports-and-statistics/reports/aug-2020/consultation-paper-on-the-format-for-business-responsibility-and-sustainability-reporting_47345.html (last visited Mar 9, 2021).

LEXFORTI

27. EU Taxonomy Regulation, EY, https://www.ey.com/en_lu/wealth-asset-management/luxembourg-market-pulse/eu-taxonomy-regulation#:~:text=The%20EU%20Taxonomy%20Regulation%20is,European%20Commission%20in%20March%202018. (last visited Mar 9, 2021).

28. EU taxonomy for sustainable activities, European Commission - European Commission, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_en (last visited Mar 9, 2021).

https://lexforti.com/legal-news/