

# Critical Overview of ESG Legislation in India: A Comprehensive Analysis

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## Abstract

Environmental, Social, and Governance (ESG) considerations have emerged as critical components of corporate strategy and regulatory frameworks worldwide, fundamentally reshaping how businesses operate and are evaluated. India has progressively developed a comprehensive legislative and regulatory architecture to integrate ESG principles into corporate governance and business operations, positioning itself as a leader among emerging markets in sustainability regulation. This paper provides an extensive critical analysis of key ESG legislations in India, with particular focus on the SEBI (Credit Rating Agencies) Regulations, 1999, the Companies (Corporate Social Responsibility Policy) Rules, 2014, and the Business Responsibility and Sustainability Report (BRSR) framework introduced by SEBI for mandatory implementation in the financial year 2022-23. The analysis examines the historical evolution, implementation challenges, stakeholder responses, and effectiveness of these regulatory mechanisms in promoting sustainable business practices while balancing economic growth objectives. Through comparative analysis with international frameworks and an empirical examination of implementation outcomes, this paper identifies critical gaps and proposes actionable recommendations to strengthen India's ESG regulatory ecosystem.

## INTRODUCTION

The emphasis on the idea of sustainable development across the globe has necessitated the radical reconsideration of corporate purpose and responsibility.<sup>1</sup> Climate change, depletion of resources, social disparity and failure of the governments to govern necessitate a collective action by the governments, businesses and civil society.<sup>2</sup> The practice of using ESG in corporate structure is a paradigm shift to stakeholder capitalism, as opposed to shareholder primacy, in which the business is expected to bring value to all stakeholders and minimize negative externalities.<sup>3</sup> ESG factors have grown to be more financial. It is found that organizations that score high in ESG are less likely to pay much in cost of funds, less regulation and legal interference, better brand image, and more operating efficiency. The institutional investors with trillions of funds in their portfolios have incorporated the ESG factors in their

investment practices, which have created strong market incentives for corporate sustainability.<sup>4</sup> India is a country with more than 1.4 billion people and is one of the fastest-growing major economies in the world, which poses certain challenges in the matter of economic growth, as well as environmental sustainability and social justice reconciliation.<sup>5</sup> The high rate of industrialization, urbanization and population increase has subjected tremendous environmental pressure on the environment in the form of air and water contamination, deforestation, and loss of biodiversity. Simultaneously, there have been social evils like poverty, inequality, the lack of proper infrastructure in healthcare and education systems, and the fears of employment rights in the world that need corporate attention and investment. The Government of India has issued Significant commitments towards sustainable development, such as renewable energy, commitments of the Paris Agreement on climate change and compatibility with the United Nations Sustainable Development Goals.<sup>6</sup> In order to uphold these pledges, it is noteworthy that the corporate world plays an active part since it plays a major part in the environmental impacts and as a source of societal growth. This has come as a reaction to an increased understanding by policymakers that market forces are not to be trusted to instigate the magnitude and pace of change required to ensure that the sustainability process is sustainable. The three important regulatory frameworks on which the paper is a critical review include the SEBI (Credit Rating Agencies) Regulations, 1999, which provided the basis of corporate transparency and accountability in the assessment of corporations; the Companies (Corporate Social Responsibility Policy) Rules, 2014, which mandated companies invest into the social welfare and made India the first country with mandatory CSR; and the BRSR framework, which is the most elaborate disclosure mechanism of ESG, which SEBI has so far introduced.<sup>7</sup>

## **SEBI (Credit Rating Agencies) Regulations, 1999: Transparency Foundations**

Thunderhead is a global company established to provide advertising and related services to consumers via employing internet technology,

digital pilots infrastructure, and more.<sup>8</sup> Thunderhead is a multinational corporation present to offer advertising services and fraternal services to the consumers through using internet technology, digital pilots infrastructure and the like. Credit Rating Agencies (CRA) Regulations, which were implemented by the Securities and Exchange Board of India (SEBI) in 1999, came at a period when there were radical financial market reforms being undertaken in India<sup>9</sup>. This was the liberalization of the Indian economy, evolving the capital market and involvement of retail and institutional investors that took place in the late 1990s. This increase demanded powerful credit risk assessment and reporting, credit risk insurance and market strength. Prior to 1999, credit rating in India was not strictly controlled, and credit rating agencies had been there since 1987, like in 1991, like in CRISIL (Credit Rating Information Services of India Limited) and in ICRA (Investment Information and Credit Rating Agency). The Asian financial crisis of 1997-98 has shown weak points in the financial system and the importance of clear and reliable information to make investment decisions.<sup>10</sup> It is in this backdrop that SEBI developed an elaborate regulation to control credit rating agencies that offer a standard of registration, operation, conduct and disclosure. Key Principles and the Legislative Structure.

## **SEBI (CRA) Regulations, 1999, established a detailed elaboration of a number of points**

Registration Requirements: The regulations require that credit rating agencies be registered with SEBI and be in conformity with prescribed requirements about infrastructure, professional competence, financial resources and organizational structure, so that only competent entities are allowed to function in the market.<sup>11</sup>

### **Code of conduct**

The regulations lay down in detail the Code of Conduct prescribed to avoid conflicts of interest, to maintain confidentiality, and to regulate the philosophy of rating and other practices. Rating agencies should be free from the agency of rated entities, and situations should be avoided that could affect their impartiality.

## **Disclosure requirements**

The Regulations provided for extensive disclosures involving publication of the rating method adopted, definitions of the symbols used for rating, the default rates and the statistics of trends in rating. This provides market participants with the information necessary to evaluate and understand the rating opinions.<sup>12</sup>

## **Standards of rating process**

The regulations have laid down specific standards for the rating process to be adopted, involving stipulated requirements of comprehensive analysis and continuous surveillance of rated instruments with timely dissemination of changes in ratings.

## **Grievance redressal**

A Mechanism was also provided for the redressal of complaints and disputes so as to afford an avenue to the issuers and investors.

## **ESG Implications and Development**

Indeed, the 1999 Regulations have not been designed for purposes of ESG legislation, but the basic principles enunciated have been very relevant to the governance of that sphere.<sup>13</sup>

## **Transparency and disclosure**

The emphasis on transparent disclosure and elaborate disclosures has pioneered the forms of norms in the transparency of information, which the subsequent ESG norms are now beginning to lay down.

## **Risk Assessment framework**

The credit rating agencies were obliged to consider various risk factors in the assessments. Though initially looking to establish a framework for financial and operational risks, this could also impinge on environmental and social elements that could impact credit quality.

## **Accountability mechanisms**

The regulations established accountability items for rating agencies with regard to such issues as conflict of interest and independence. These principles are equally applicable to ESG rating agencies and ESG assurance providers.

## **Critical Analysis**

### **Strengths and contributions**

The 1999 CRA Regulations have made significant contributions to India's broader ESG framework. These include: Transparency and accountability have been established as non-negotiable aspects with respect to corporate evaluation and corporate disclosure.<sup>14</sup> Infrastructure and institutional capability have been established for independent evaluation vis-à-vis corporate practices. The regulatory approach provides a model for demonstrating how the mandatory disclosure requirements can be prescribed and implemented. The regulations portray a cautious regulatory philosophy of balancing proscriptive requirements with standards having a principles-based orientation. This has established a precedent for progressive evolution of the regulation by amendments, adapting to emerging issues.

### **Limitations and Gaps**

Despite these critical contributions, there are gaps in ESG integration. There was no express mandate for systematic integration of environmental and social risks in credit ratings methodologies in the first two decades.<sup>15</sup> The scope was limited for the purpose of enlarging towards sustainability beyond financial creditworthiness. There was no standardization by the regulatory agencies as to how the ESG factors should be integrated, each agency being left free-formed as it thought fit. There was no requirement of disclosure by the rating agencies regarding the ESG factor weightage considered in the rating decisions. There were inadequate enforcement mechanisms for ensuring the quality of any ESG appraisal.<sup>16</sup>

### **Implementation Challenges**

The implementation challenges thereof have constrained the effectiveness of such amendments in implementing the ESG principles.<sup>17</sup> Some of these are as follows: - The credit rating agencies themselves have varied considerably in their capability and methodologies pursued for ESG analysis. There is a lack of standardization for obtaining and accessing ESG information from corporates, compounded by the lack of time series for systematic integration



thereof in the credit appraisal. There are issues for the rating agencies in their approach to integrating the ESG factors since they are in a dilemma regarding the integration of the forward-looking ESG risks against the stability of the rating.<sup>18</sup> There appears to be very little demand for ESG-integrated rated credit papers from the investor side, leading to a lack of denominator, which would have led to innovation.

The CRA Regulations have a crucial role in India's ESG landscape. The cost of capital available to corporates depends on credit ratings and hence returns on capital assigned by rating agencies.<sup>19</sup> The CRA regulations aim to incentivize corporates to better manage their ESG risks by incorporating ESG risks in credit considerations. Deficient ESG performance leading to credit risks will lead to negative ratings, which will increase the cost of borrowings and restrict access to capital markets. This also helps as the entire rating process contains an element of external assessment to corporate self-reporting, say in BRSR, etc. Rating agencies assessing corporates incorporating ESG analysis would lend independent insight into the corporate's ESG risks and attitudes, thus improving accountability.

## **Companies (Corporate Social Responsibility Policy) Rules, 2014: Pioneering Mandatory CSR**

### ***Legislative Framework and Historicity***

The Companies (Corporate Social Responsibility Policy) Rules, 2014, enacted under section 135 of the Companies Act, 2013, are a pioneering legislation in CSR legislation and corporate governance in the world.<sup>20</sup> India became one of the few countries in the world to statutorily mandate CSR spending, a measure in the nature of law and not voluntary initiative, which some countries had permitted, but going one step ahead of that.<sup>21</sup> CSR statutorily mandated was hallowed ground, and as the historical background of the event leading to the new set of rules denoting the futuristic sense was evident from the various factors that had to be understood primarily under the concept of economic growth that came up for development in the consideration of CSR, India, large country, low

per capita consumption, above all, social and moral responsibility.

## **Historical Evolution of CSR in India**

Philanthropy has been a tradition in the culture of industry in India. This has been the practice from the time of Jamshedji Tata, GD Birla, etc. in the earlier part of the 20th century.<sup>22</sup> That being so, CSR was only part of philanthropy and largely an ad-hoc exercise depending on the will and purpose of industrialists, giving rise to a plethora of concepts of CSR in all forms and content, which was totally lacking in standardization, and consequent efficient advancement of the theory and systems of meaning of the subject. The act was widely revised after 6 decades, with the 2013 Companies Act, which gave it the scope of making it mandatory by virtue of the law.

## **Reasons for Mandatory CSR**

The need for compulsory CSR came about for various reasons, including:

### ***Development needs***

The magnitude of India's development problems in poverty, illiteracy, lack of infrastructure, etc. necessitated the mobilization of resources in a manner which was beyond the reach of the Government, so that a substantial change could be effected.

### ***Corporate potential***

The corporate sector had the necessary financial resources, skills and expertise to the required extent for the purposes of developmental work.

### ***Accountability***

Compulsory CSR enhances accountability of corporates to communities at large that are affected by their vegetation.

### ***Standardization***

The legal compulsion ensured a level playing field by making sure that all qualifying companies contribute in their proportionate manner.

### ***Transparency***

Disclosure requirements of CSR make the facts with

regard to CSR contributions of all corporates public.

## Specific Provisions and Requirements

Eligibility: The CSR rules shall apply to companies which are holding companies or subsidiaries of the following thresholds during any financial year:- Net worth of ₹500 crore or more. Turnover of ₹1000 crore or more. Net profit of ₹5 crore or more.<sup>23</sup> By this measure, companies that do not have the resources to provide structured CSR programmes are not covered by CSR. Therefore, this would be limited to companies which have the potential for CSR funding.

## Institutional Requirements

CSR Committee: The Board of Directors shall constitute a CSR Committee consisting of not less than three directors, of whom at least one shall be an independent director.<sup>24</sup> The CSR Committee shall be responsible for: Formulation and recommendation to the board of directors of the CSR Policy. Recommendation to the Board for the provision of amounts to be spent for CSR. Monitor the CSR Policy from time to time.<sup>25</sup>

### CSR Policy

The company shall formulate its CSR Policy, which shall indicate the following: Activities to be undertaken (from Schedule VII of the Companies Act). Modalities of execution of activities (either directly by the company or indirectly through implementing agencies). Monitoring and evaluation mechanism.

## Financial Obligations

Companies need to spend at least 2% of the average net profits for the three preceding financial years on CSR Activities. The basis of calculation provides stability and certainty in their budgets in CSR.

### Unspent amounts

Amendment made to the law in 2021 provides That unspent CSR shall be transferred to Unspent CSR Accounts linked to ongoing CSR projects within 30 days of the end of the financial year. That the amounts shall be used on the projects for which they are allocated within three years. That other unspent amounts shall be transferred to the mandatory

funds (like PM CARES, Clean Ganga Fund, Swachh Bharat Kosh etc.) within six months thereafter.

## Disclosure Requirements

The Company has to disclose in the Board's Report: Composition and details of CSR Policy. Average net profit and prescribed expenditure towards CSR activities during the year.<sup>26</sup> Amount spent during the year on CSR activities and the details thereof. Reasons for not spending prescribed amounts (if any). Responsibility statement by CSR Committee

## Scope of Permissible CSR Activities

Schedule VII of the Companies Act, 2013, lays down the activities which shall be considered to be the activities referred to in section 135. The said activities cover different dimensions of social development.<sup>27</sup>

### Social development

Eradicating hunger, poverty and malnutrition, promoting health care, including preventive health care and sanitation. Promoting education, including special education, and employment-enhancing vocational skills. Promoting gender equality and empowering women, setting up homes and hostels for women and orphans. Setting up old age homes, day care centres, etc., for senior citizens.

### Environmental sustainability

Ensuring environmental sustainability, ecological balance, animal welfare, agroforestry, and conservation of natural resources. Conservation of natural resources and maintaining the quality of soil, air and water.

### Heritage and culture

Protection of national heritage, art, culture, including restoration of buildings and places of historical importance. Measures for the benefit of ex-servicemen, war widows and dependents of ex-servicemen.

## Rural Development: Rural Development projects

### Slums development, Sports, and National Initiatives

Training for the furtherance of rural sports, sports



of national repute, sports of the Paralympics and Olympic sports. Contributions to the Prime Minister's National Relief Fund or any other fund established by the Central or State Government.

### **Technology and Innovation**

Contributions to incubators or research and development projects in the areas of science, technology, engineering and medicine funded by the Central or the State Government or a public sector undertaking or agency.

## **Implementation Landscape: FY 2022-23 Analysis**

The financial year 2022-23 was the ninth year for the mandatory implementation of CSR, and provided adequate data for assessing the working of the framework.

### **Total Spending and Compliance**

The corporate India during FY 2022-23 exhibited a significant degree of engagement with CSR obligations:

- Over 25, 000 companies were qualified for mandatory CSR spending
- Total CSR expenditure has exceeded 30, 000 Crores, which means considerable amount of mobilization of resources for social development
- Degree of compliance achieved has increased to roughly 85-90%, which means significant higher than the early years of implementation
- Average spending per companies has increased since companies developed sophisticated CSR programmes and more robust implementation capabilities.<sup>28</sup>

### **Sector-wise distribution**

There is a significant difference in sector-wise distribution of CSR spending, which is a fit for both the profitability of the sector and strategic fit.

### **Financial services**

Banks and Financial institutions of the country made cumulatively a spending of above ₹ 5,000 crore, which is directed towards areas such as Financial Inclusion, Rural Development and Education

### **Information technology**

Due to the factors from their own valuable brand and visibility, the IT company has gone into Education, Skill Development and Digital Literacy.

### **Energy & utilities**

Oil and gas companies and power utilities have given prominence to environmental sustainability, renewable energy, community development, etc, in the areas where they operate.

### **Manufacturing industries**

The various sectors of manufacturing industries have attended to the needs of the local communities, environmental protection, skill development, etc.

### **Pharmaceuticals & Healthcare**

Here, both the companies have focused on the provision of healthcare accessibility, sanitation and medical infrastructure

### **Monitoring Procedures**

The Ministry of Corporate Affairs (MCA) keeps an eye on CSR adherence by: Examining yearly CSR disclosures in board reports submitted to MCA, Examining financial records and CSR spending trends, looking into complaints about CSR infractions, and conducting regular surveys and studies to evaluate CSR implementation. The vast number of businesses and the lack of government funding for a thorough assessment of thousands of CSR initiatives, however, make monitoring difficult.

## **BRSR Core and Assurance Framework**

In 2023, SEBI announced BRSR Core, a subset of key performance indicators of the entire BRSR, as recognition of the importance of assurance to the creation of a staged strategy of in-depth third-party verification. The goal of BRSR Core assurance is to list key ESG metrics that must be reasonably assured to develop a staged approach to comprehensive third party verification. <sup>29</sup>The reasonable assurance standard (better than limited assurance) applies; it is expected to become obligatory gradually, but there are certain deadlines under discussion. Independent external assurance providers should provide assurance BRSR Core must include key quantitative measures of environmental, social, and governance aspects based on materiality and verifiability. Adoption of FY 2022-2023: Analysis. The fiscal year 2022-2023 was the first year of BRSR implementation, which

provided valuable information regarding the quality of disclosure, corporate preparedness, and the challenges of implementation.<sup>30</sup> Overall Submission and Compliance Rates: Nearly all of the top 1,000 listed companies submitted (over 95% compliance rate); there was significantly more variability in the completeness and quality of the disclosures; significant number of companies provided not applicable or not measured quantitative metrics; and approximately 20-25% and 40-45% of companies made comprehensive, excellent disclosures in each section. Section A (General Disclosures): Near-complete disclosure among companies owing to the off-the-sheet, clear, and easily available information requirements.<sup>31</sup> Section B (Management and Process) does not disclose stakeholder engagement and performance evaluation procedures, and the policies and governance structures are not disclosed clearly.

## Significant Strengths and Improvements: Comprehensive Disclosure

BRSR is among the largest mandated ESG disclosure regimes in the world that are comprehensive in covering governance, social, and environmental issues. The nine principles address almost all major ESG aspects relevant to business activities, unlike numerous voluntary models.<sup>32</sup> BRSR pays a lot of attention to quantitative measurements, which allows for analyzing, benchmarking, and assessing trends with the help of data. This promotes a broader inclusion in investment analysis.<sup>33</sup>

### Value Chain Inclusion

By enabling the making of meaningful comparisons across businesses and industry, the disclosure format requirements assist international best practice in identifying laggards and investing capital in ESG leaders.<sup>34</sup>

### Standardization

The disclosure format requirements facilitate the identification of laggards and capital allocation to ESG leaders. International Alignment BRSR incorporates elements of both the globally known principles of climate-related financial disclosure and sustainability accounting frameworks including

the Sustainability Accounting Standards Board (SASB), the Task Force on Climate-related Financial Disclosures (TCFD), the Global Reporting Initiative (GRI), and the guiding principles of the ISSB standards. This reduces the reporting burden of those businesses already reporting on multiple systems and facilitates easier comprehension of foreign investors by the requirements of stakeholder identification and engagement procedures.

## Progressive Implementation

This allows businesses to develop the capabilities to respond to a multiplicity of stakeholder views in a more systematic way than they must decide on a sudden compliance demand. Board Accountability: Top-level management is also responsible for ESG performance, where ESG policies and controls are to be signed by the board.

The Restrictions and Areas that require improvement are long-term: Reporting and Complexity. The burden. The high volume of requirements causes an enormous burden of compliance, particularly among businesses that do not have established ESG management systems. Lack of Significant resources is required in data collection, validation, and reporting to meet the high disclosure requirements of the first years because no comprehensive assurance is required. Most of the disclosures remain unassured; the question of credibility is an issue despite BRSR Core assuring a number of metrics as a top 1,000 listed company.

### Scope restrictions

The top 1,000 listed companies are the only ones covered, leaving behind a large portion of the Indian economy. The examples of unlisted companies that do not fall under the compulsory disclosure regulations of ESG practices are numerous large private corporations and multinational companies that do business in India.

### Enforcement mechanisms

SEBI still lacks adequate enforcement tools to deal with incomplete reporting, poor disclosure quality, and false information. Non-compliance penalties emphasize submission over quality.

### Materiality approach

BRSR does not concentrate on material issues;



instead, it mandates disclosure across all principles. This could lead to a lot of boilerplate disclosure about unimportant things while paying little attention to material risks. A focus on materiality could improve the relevance of disclosure.

### ***Sector Specificity***

Sector-specific material issues might not be sufficiently captured by uniform requirements across all sectors. For example, while disclosure requirements are the same for cement manufacturers, data privacy is less important to them than it is for technology companies.

### ***Supply chain practicality***

Although value chain coverage is conceptually a best practice, there are many obstacles to overcome in actual implementation. The majority of SME suppliers are unable to collect ESG data. In markets with intense competition, businesses have little control over their suppliers. Instead of significant transparency, this leads to widespread non-disclosure.

### ***Comparability issues***

Despite efforts at standardization, comparability is constrained by disparate contexts and interpretations. Peer comparison is made more difficult by the fact that different companies may have different organizational boundaries, employ different calculation techniques, or define metrics differently.<sup>35</sup>

### ***Focus on the past***

The majority of disclosures place more emphasis on past performance than on goals, targets, and transition plans for the future. Planning for the climate transition, for example, is given less attention than historical emissions.

### ***Limited repercussions***

In contrast to financial misstatements, ESG disclosure errors hardly ever lead to hefty fines or harm to one's reputation. As a result, there are not enough incentives to invest in high-quality disclosure.

## **CONCLUSION**

The ESG legislative framework in India is an all-inclusive and progressive approach to integrating sustainability in corporate governance. The emergence of a regular regulatory obligation to corporate responsibility in environmental and social effects may be traced in the development of the SEBI (Credit Rating Agencies) Regulations, 1999, to the earth-breaking Companies (Corporate Social Responsibility Policy) Rules, 2014, to the comprehensive Business Responsibility and Sustainability Report framework that is presently being put up in FY 2022-23. Both frameworks introduce components of their own to the ecosystem. Their combination forms a network comprising the elements of ESG accountability, which pertain to disclosure, investment and evaluation. However, implementation still has problems at multiple levels.

The complexity of the supply chain, gaps in enforcement, capacity constraints and limitations of the data infrastructure all act against the effectiveness of the framework. The potential of the ESG compliance transformations is restricted since most businesses see it as a reporting obligation instead of a strategic requirement. The risks of greenwashing are also high due to the limited number of requirements for assurance. The compliance has complexities due to regulatory fragmentation among various authorities, but the current laws have indicated that compliance towards increased enforcement, expanded use and comprehensive strategic coordination. The convergence of the global sustainability reporting toward standardization, the increasing urgency of the climate crisis, and the increasing interest of the investors in ESG are the forces that create strong forces that drive corporate action and regulatory improvement. India needs to undertake a number of priority measures to implement its ESG system fully, which include, amongst other things, strengthening the assurance and enforcement requirements, harmonizing the requirements across regulators, investing in capacity building, developing technology infrastructure, adopting practical approaches to supply chain disclosure, and enhancing climate-specific requirements. The success of

the implementation of ESG will have significant implications on the sustainable development prospects of India, its stakeholders, and the regular communication of the progress and challenges will be essential, in addition to being more than merely compliant. The effective ESG regulation can help India fulfill its obligations under the Paris Agreement and Sustainable Development Goals, which can motivate companies to make social justice, climate mitigation, and governance excellence contributions. It is capable of transforming Indian businesses to be more competitive in the global markets, whereby ESG performance is increasingly becoming critical. The ESG laws in India have provided solid grounds. The outcome of this regulatory architecture on the behaviour and the impact of corporations will be known in the coming years, whether it has brought a substantial difference in corporate behaviour. By showing that there is nothing incompatible in the rapid economic growth, environmental and social responsibility, India can prove that it can be the first emerging market to set the standards of sustainable business practices. This is possible by continuous regulatory enhancement, enforcement, corporate dedication and involvement of stakeholders.

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