# A Critical Analysis of Environmental, Social, and Governance (ESG) in India: A Proposed need for a Codified Law

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## Abstract:

*The following paper seeks to understand what the concept of ESG is in status quo. It primarily breaks down the components of ESG and seeks to understand their respective applicability in context of the present system. The analysis that is put forth in the paper is two-fold, namely to place an understanding of ESG from the context of India, in terms of the applicable legislations, norms, regulations and so forth. The latter half of the paper seeks place a deep emphasis and understanding of ESG practices in other common and civil law jurisdictions , and seek to understand what can be implemented in India. To conclude, the paper lays down a further series of mechanisms that are to be implemented to ensure that proper ESG compliance is enforced.*

**Key words:** *ESG, Status Quo, Practices, Legislations, Compliance*

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*"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs"*

- Brundtland Report, 1987.

## Introduction

Environmental, Social, and Governance (hereinafter referred to as "**ESG**") is a framework developed to be integrated into an organization's business strategy and that takes into account the requirements and opportunities to create value for all key stakeholders (such as employees, customers and suppliers and financiers). The phrase "ESG" was first used in a study titled "Who Cares Wins" in 2004, which was a collaborative effort of financial firms at the request of the UN.[1] Since then, the ESG movement has evolved from a mere United Nations-sponsored corporate social responsibility project into a global phenomenon with much more than US$30 trillion in managed assets in less than two decades.[2]

Having been in existence for the last 19 years, ESG has transformed into a commonly found ingredient of business strategies and is now seen as one of the prominent and foremost torchbearers of Corporate Social Responsibility (CSR). Simply put, ESG is a by-product of responsible investing and assumes the notion that "sustainability", as a cause, transcends beyond just the environmental activism realm. Responsible investing is described as "a strategy and practise to incorporate environmental, social, and governance (ESG) considerations in investment strategies and engaged management" by the standards for responsible investment (PRI). As a result, investors typically utilise ESG as a benchmark and technique to assess corporate behaviour and potential future financial success. The three fundamental elements of ESG are the most important criteria to take into account when conducting investment evaluations and making investment decisions. Therefore, ESG is viewed as an investing concept for assessing the sustainable growth of businesses.

## The Pillars of ESG

**Environmental [E] –** "E" or the environmental criteria, in ESG, refers to a company's energy consumption, waste output, resource requirements, and any subsequent effects on living

[1] Who Cares Wins, *The Gloval Compact*, United Nations Environment Program (UNEPFI) (June, 2004) (March 7,2023;11:00PM) https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf.

[2] Micheal Holder, *Global sustainable investing assets surged to $ 30 trillion in 2018* (March 7, 2023, 11:30 PM) https://www.greenbiz.com/article/global-sustainable-investing-assets-surged-30-trillion-2018.

things. Every business utilises resources and energy, and every business both influences and is influenced by the environment. The environmental aspects taken into account are the firm's overall resilience to physical climate-related risks, the management's guardianship and handling of natural resources, and both indirect and direct emissions of greenhouse gases (such as climate change, floods and inundations, and firehazards).

**The Importance of “E” in ESG**

ESG's component parts are interconnected, just as it is an integral aspect of how one conducts their business. For instance, when businesses try to abide by environmental rules and more general sustainability concerns, social criteria might overlap with environmental requirements and governance. Although the majority of the attention is on environmental and social factors, governance cannot be hermetically divided, as every leader is aware. Admittedly, mastering both the letter and the spirit of the law is necessary for effective governance. For example, preventing violations before they happen by maintaining transparency and open communication with regulators rather than submitting reports formally and letting the findings speak for themselves. With good reason, the environmental component of the ESG formula frequently receives the greatest attention. Environmental concerns are the biggest dangers to corporations, keeping love for mother earth aside. The top five hazards identified by experts in recent Risk Reports from the World Economic Forum are all associated with the environment, with climate-related risks coming in first in 2022. These dangers directly affect how a corporation conducts its regular operations. Corporations have a very real motivation to control their environmental impact and get ready for a tomorrow with much more unstable environmental catastrophes, from supply problems to property destruction to public backlash. The chances to adapt to shifting laws, populations, and prioritize investments are reason enough for the most forward-thinking businesses to start sustainability makeovers that completely reimagine their business strategies and put them in the lead.[3]

As custodians of employment and sustenance, and driving forces of large campaigns and movements, in addition to the large-scale public and online presence, there lies an impetus on the companies, in today’s day and age, to actively advocate for environmental protection, harmony and advancement. It is pertinent for companies to promote healthy in-office practices that are eco-friendly so that their employees can in turn practice the same at their

[3] *Id.*

homes and personal spaces. The cultivation of such an eco-centric approach and culture will ensure that environmental activism and policies are widespread[4].

## ESG in India – Need for a Uniform Code

Environment, Social, Governance ("ESG") is a term that has gained significant prominence in India over the past few years. More and more countries have adopted measures in line with significant environment compliances and the need for companies and investors to adopt measures in this regard. India as a country has been making rapid strides in ensuring compliances under global ESG norms and has additionally brought forth policy measures to address the said issue[5].

With reference to environmental norms that are to be followed under ESG, companies and organisations are required to take into consideration aspects such as climate policies, energy utlisation, conservation of natural resources and so forth[6]. It is pertinent to note that while at present there does exist a plethora of legislations that govern and provide environmental safeguards, the same places no onus on organisations to comply or be held expressly liable for any contraventions that occur in pursuance of their functioning[7]. There is a heightened need to put in place a code that expressly deals with aspects related to ESG and to also put in place an effective mechanism tasked with the enforcement of the provisions that said legislation stipulates. While at present, there are numerous directives that are in place mandating listing companies to comply with a few norms that are in place, they place no onus on these organisations to have to enforce them and are often let off with a minimal fine provided they have acted in contravention[8].

The environmental criteria under the present ESG regime in India primarily encompasses aspects pertaining to energy consumption of the organisation, waste disposal mechanisms, natural resource utilisation as well as necessary disclosure and compliances with the country's environmental legislations[9]. The same is line with the globally propagated

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[4] Sachini Senadheera, Richard Gregory, Jorg Rinklebe, and Muhammed Farukh, The development of research on Environmental, Social and Governance, 8 TAYLOR & FRANCIS 15 (2022).

[5] Ritika Seth, Shubham Gupta & Harshita Dupta, ESG Investing in India: A Critical Overview, 2 HANS SHODH SUDHA 69 (2021).

[6] *Id.*

[7] *Id.*

[8] Bhuvnesh Kumar & Sharad Panwar, *ESG Norms in the Indian Corporate Scenario*, LiveLaw (6th March, 2021, 10:00 PM) ESG Norms In Indian Corporate Scenario: Navigating Through Uncharted Waters (livelaw.in).

[9] *Id.*

Sustainable Development Goals (SDG) placing an onus on countries to adopt heightened environmental protection measures and sustainability goals, further India being a signatory to the COP26 declaration places a further emphasis to enact policies and laws of such regard[10].

## Present Legislations Governing Environmental Norms Under ESG

At present, there are various legislations that place on onus on companies to enact policies and comply with norms pertaining to environmental regulations in India. Legislations such as the Factories Act, 1948[11], Environment Protection Act, 1986[12], Air (Prevention and Control of Pollution) Act, 1981[13], Water (Prevention and Control of Pollution) Act, 1974[14], Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2016[15] along with the Companies Act, 2013[16] provide for a majority of provisions that govern the respective environmental norms under ESG in India.

Legislations such as the Environment (Protection) Act, 1986, Air & Water Acts, 1981 & 1974 respectively along with Factories Act, 1948 lay down specific rules pertaining to the governance of e-waste management, bio-medical waste disposal, usage and disposal of hazardous waste substances, battery disposal and so forth[17]. Further, the Water and Air Acts places an express obligation on companies to prevent the control and abatement of air as well as water pollution. Further, The Environment Protection Act also provides for the concept of Environmental Impact Assessment (EIA) to be carried out primarily prior to a project to ensure that all the environmental norms are complied with by the establishment. The legislation also places an onus on industries that haven't carried out their EIAs to accordingly comply with the present norms[18].

In addition to the above, further the Public Liability Insurance Act, 1991 also lays down the requirements that are placed on establishments to obtain public liability insurance and

[10] *Id.*
[11] Factories Act, 1948.
[12] Environment Protection Act, 1986
[13] Air (Prevention and Control of Pollution) Act, 1981
[14]Water (Prevention and Control of Pollution) Act, 1974.
[15]Waste (Management, Handling & Transboundary Movement) Rules, 2016.
[16]Companies Act, 2013.
[17]Sanjam Arora & Jagrati Gupta, Environmental, Social & Governance Laws and Regulations Report 2023 India, ICLG (7 March, 2023; 10:30 PM) Environmental, Social, & Governance Laws and Regulations Report 2023 India (iclg.com).
[18] *Id.*

provide immediate relief to individuals who are subject to accidents that are caused as a result of violations that occur due to a public incident.[19]

It is to be noted that while these legislations do place an onus on organisations to comply with the laws that are in place, it does not provide for any specific liability that is imposed with regards to contraventions that occur[20].

**Presence of Business Reporting & Sustainability Reporting Standards (BRSR)**

While at present there does exists a business & sustainability reporting standards that are followed by listing companies, it places no mandate on any of the stakeholders to duly comply with the norms that are laid down[21]. At present, the BRSR guidelines specific to environmental disclosure require companies to declare its data on energy consumption, emissions, water usage, waste management and disposal[22]. While, the present system is a welcome step towards ensuring compliance with norms, concerns of greenwashing still loom large and it is important that proactive measures be taken in ensuring that a robust code with proper enforcement measures be enacted.

**Environmental Impact of ESG in India**

It is pertinent to note that the while the concept of ESG did come about in the earlier half of the decade, with it being specifically applicable to a limited set of listed companies, there still exists a lacunae in its enforcement and governance. While the SEBI as well the Companies Act have called for more stringent enforcement measures with respect to both compliances as well as the disclosures under the ambit of the present ESG norms that are in place, there continues to exist a complacency in this regard.[23]

There still exists no form of proper governance for ESG mechanisms in India. While a multitude of legislations do deal with aspects pertaining to environmental regulations, the degree of enforcement is an area that is presently unaddressed. Multiple concerns of

[19] Public Liability Insurance Act, 1991
[20] *Id.*
[21] Anubha Agarwal, BRSR disclosure pathway to green companies: Indian industry lobby at CoP 26, DOWNTOEARTH (March 3, 2023; 8:00 PM), BRSR disclosure pathway to green companies: Indian industry lobby at CoP26 (downtoearth.org.in)
[22] *Id.*
[23] *Id.*

greenwashing has been raised by stakeholders owing to lack of coordinated effort in ensuring that companies comply with norms that are in place. The same would aide in considerable change with respect to the environmental landscape of the country as well as reduction of its carbon footprint. The system at present is oriented in a manner wherein, onus of compliance is placed on the organisations itself rather than on legislations and regulations.

However, with the advent of the present fiscal year, efforts have been stepped up to ensure better enforcement of ESG norms in the country with SEBI mandating top listed companies on the basis of market capitalisation to provide the necessary disclosures. Considerable efforts need to be taken in putting forth measures that extend beyond that of listed companies, to include MSMEs and other manufacturing units as well[24].

**Implementation of a Uniform Code**

At present barring the existence of a few provisions referred to in the Companies Act, as well as isolated environmental regulations, Indian law does not govern aspects pertaining to ESG. The present BRSR guidelines laid down by SEBI which was an optional exercise earlier has been now mandated for the top thousand listed companies in the country, categorised on the basis of their market capitalisation[25]. It is however imperative to note that these merely deal with the declarations that establishments are expected to fulfil[26].

It is imperative that the country take substantive steps in terms of enacting a uniform policy/regulation similar to that of the European Union as well as countries such as Brazil, United States, Canada and so forth. The EU legislations specifically addresses concerns pertaining to greenwashing by organisations and related stakeholders and provides for substantive changes that are to be made in this regard[27].

Additionally, the present eco-system in the country pertaining to ESG is rather complicated wherein companies demarcated under the regime are required to comply with a multitude of declarations. In addition to the earlier stipulated BRSR guidelines, companies are required to

[24] Benjamin Lin, *Indian transforms its ESG landscape to be future ready,* TIMES OF INDIA (March 4, 2023; 6:00 PM) India transforms its ESG landscape to be future-ready (indiatimes.com)
[25] *Id.*
[26] *Id.*
[27] Derina Bannon &Laura Wadding, Environmental, Social & Governance, DELOITTE (March 4, 2023; 6:30 PM) ESG European Regulatory Journey | Deloitte Ireland | Financial Services

further comply with the respective governance and environmental legislations creating a disarray in terms of the number of requirements that are placed on companies[28]. It therefore acts as a hindrance to organisations and it is imperative that a specific system be enacted to curb the said issue and encourage stakeholders to adopt measures as stipulated[29].

## ESG regime - a Cross Jurisdictional Analysis

Climate change, nature loss, renewed calls for racial equality, a demand for improvements to working conditions, and COVID-19 have been the inflexion point in the business landscape across the globe in the yesteryears.[30] Businesses must increase their commitment to sustainable value creation that takes into account the broader needs of people and the environment in order to strengthen their resilience and increase their ability to function. In lieu of the same, across jurisdictions, regulators have finalized new rules that will require companies to disclose information on their ESG footprint in their annual reports and mainstream regulatory filings.[31] Furthermore, it is pertinent to note that to bridge the gap that persists between the demand of ESG information and its supply by the firms, more and more countries have adopted mandatory ESG disclosure legislations.[32]

**United States**

There is no formal corporate governance code in the United States. The ESG considerations are largely driven by voluntary market led responses.[33] The ESG regime in US is distinct when compared to the European Union which has adopted specific, prudential, and conduct-based directives on ESG. However, under the Biden Administration the regulatory framework with respect to ESG has undertaken rapid changes. President Biden in 2021 issued an executive order requiring the federal government to "drive assessment, disclosure, and mitigation of climate pollution and climate-related risks un every sector of economy."[34] In the following months, the SEC announced an all agency approach to tackle climate change and

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[28] *Id.*
[29] *Id.*
[30] Veronica Poole and Kristen Sullivan, *Tectonic shifts: How ESG is changing business, moving markets, and driving regulation, Deloitte Insights*, Available at - https://www2.deloitte.com/us/en/insights/topics/strategy/esg-disclosure-regulation.html.
[31] *Ibid*.
[32] *Countries affected by Mandatory ESG Reporting – here's the list*, WorldFavour, Available at - https://blog.worldfavor.com/countries-affected-by-mandatory-esg-reporting-here-is-the-list.
[33] Global Legal Group, *Environmental, Social, and Governance Law USA*, ICLG.com (January 2023), Available at - https://iclg.com/practice-areas/environmental-social-and-governance-law/usa.
[34] *Ibid*.

other ESG risks and opportunities, which included, among other things, the creation of a climate change and ESG task force.

In 2010, the US Securities and Exchange Commission (SEC) released *interpretive guidance* on how current disclosure laws might be applied to climate-related issues. The SEC stressed long-standing materiality standards, urging companies to take into account the materiality of factors like the direct and indirect impacts of legislative and regulatory changes on operating and financial decisions, capital expenditures to reduce greenhouse gas emissions, and the physical risks of climate change.[35] Furthermore, in March 2022, the SEC proposed rules to require climate change disclosure in the annual reports and registration statements of public companies registered with the SEC, including any company (domestic or foreign) whose stock is listed on a U.S. stock exchange.[36] However, apropos this proposal the role of SEC in this area was questioned.

**European Union (EU)**

EU’s Non-financial Reporting Directive “NFRD” of 2015 requires non-financial disclosures which pertain to ESG matters, human rights, and anticorruption/bribery matters. The non-binding guidelines with respect to climate-related disclosures have been in place in since 2017, building on the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD).[37]

In furtherance, from 2021 the Sustainability Finance Disclosures Directive (SFDR) requires entities to report on the integration of sustainability risks and consideration of adverse sustainability impacts in business processes; and to provide sustainability-related information with respect to the financial products and services they offer to their clients.[38] The SFDR from January 2023 requires an adverse sustainability impacts statement whenever the investor manager considers risk on sustainability factors.

[35] Paul Weiss, *The U.S. Regulatory Framework on ESG Disclosures* (July 2021), Available at - https://www.paulweiss.com/insights/esg-thought-leadership/publications/the-us-regulatory-framework-for-esg-disclosures?id=37633.

[36] White & Case, The Global ESG Regulatory Framework Toughens Up (July 2022), Available at - https://www.whitecase.com/insight-alert/global-esg-regulatory-framework-toughens.

[37] *Supra*, note 1.

[38] Lewis Davison, Fiona McNally and Charlotte North, ESG: EU Regulatory Change and Its Implications, Harvard Law School Forum on Corporate Governance (February 2023), Available at - https://corpgov.law.harvard.edu/2023/02/18/esg-eu-regulatory-change-and-its-implications/.

Moreover, the EU Green Taxonomy Regulations is a system that establishes a list of "environmentally sustainable economic activities". It requires companies to disclose the proportion of "environmentally sustainable economic activities" in their business, investments, or lending activities.[39] Additionally, the Green Bond Standard promotes the issuance and investment in green bonds in order to help finance Europe's low-carbon transition by establishing a voluntary standard for green bonds that ensures sustainability and investor protections.[40]

**United Kingdom**

The UK Corporate Governance Code, the UK Listing Rules, and the Wates Principle are responsible for maintaining the ESG Regime in the United Kingdom. The Companies Act of the UK lays down responsibility on the Director to act in good faith and must take into considerations the environment, suppliers and creditors, social and ethical matters, and the long-term interests of the company before taking any decisions.[41]

It is pertinent to note that the UK Listing Rules require the companies to make disclosures which are consistent with the TCFD Recommendations. Listed companies are required to make - *firstly*, disclosures pertaining information about environment matters including the impact of the business on the environment. *Secondly*, key performance indicators relating to environmental matters. *Thirdly*, details pertaining scope 1 and 2 carbon emissions and certain scope 3 emissions and energy consumed, and any energy efficiency actions taken.[42] Recently, the government of UK has adopted a Roadmap towards mandatory climate-related disclosures that will broaden the scope of mandatory TCFD-based reporting across the UK financial markets by 2025.[43]

[39] *Supra*, note 1.
[40] Samuel L. Brown and Alexandra Hamilton, Emerging EU ESG Requirements: Transatlantic Implications for Multinational Companies, 13 NATIONAL LAW REVIEW 68, (2022).
[41] The Companies Act 2006, § 172.
[42] *Supra*, note 1.
[43] *Ibid.*

**Brazil**

Concerning the provisions relating to environmental protection, Brazil has established strong foundations with the help of its constitution and innumerable legal instruments such as the National Environmental Policy Law, National Solid Waste Policy law and Forestry Code.[44]

1. **National Environmental Policy -** Law No. 6938 of 1981 establishes NEP. This legislation helps put in place environmental principles and guidelines, and standards relating to the same. This legislation makes it compulsory for the actors, government or private, to conduct an environmental impact assessment and obtain a permit before practising any activity which can be potentially polluting. It establishes competent institutions to lay down conditions for licenses and hold inspections to control developments that can be potentially polluting.[45] This legislation was enacted to *"preserve, improve and recover the environmental quality conducive of a healthy life, with a view to ensuring socio-economic development, the interests of national security and the protection of human life."*
2. **National Solid Waste Policy -** This law directly or indirectly applies to all legal entities and individuals responsible for generating solid waste and its management. The primary objective of this legislation was to limit the waste produced in Brazil and to make solid waste management more sustainable.[46] This legislation empowers state and local government bodies to enact laws to implement the national code. The federal government have created programs to aid and provide grants to local government bodies to help them train and recycle waste picking and its community.
3. **Forestry Code -** This code was enacted in 1965 to protect the Amazon Forest. The code allowed the landowners to control 35-80% of the property under the nation's vegetation. This implies that the landowners can purchase lands in amazon but can farm only 20% of the same. Implementing this code was a little tricky; hence, Brazil Government 2010 mandatorily mapped the rural properties and registered them through a Cadastro Ambiental Rural system.[47]

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[44] Bernardo Araujo, e.d., *Brazil: ESG regulation in Brazil - Part one: Exploring the 'E'*, DATAGUIDANCE, (Mar 8th, 2023, 7:57 pm) https://www.dataguidance.com/opinion/brazil-esg-regulation-brazil-part-one-exploring-e.

[45] *Id.*

[46] Silvano Silverio, *U.S Brazil Joint Initiative on Urban Sustainability*, EPA, (Mar 9th, 2023, 12:48 am) https://archive.epa.gov/international/jius/web/html/brazilian_national_solid_waste_policy.html.

[47] Unknown, *Brazilian Amazon*, THE NATURE CONSERVANCY (Mar 9th, 2023, 12:17 pm) https://www.nature.org/en-us/about-us/where-we-work/latin-america/brazil/stories-in-brazil/brazils-forest-code/.

### i. Environmental Issues in Brazil

- **The collapse of Dams** - Recently, dams in Brazil were seen to collapse, which has led to the check of compliance of safety standards all over the mining sector. This would not only prevent human-made disasters but also consider the long-term risks to the environment and look after shareholder value.[48] The dam's most recent collapse was near Brumadinho, resulting from an "upstream tailings dam failure." Before this, in 2015, near Samarco, another dam collapsed. The Samarco and Brumadinho dam failures highlight the specific risks posed by warehousing wet mining tailings. Still, the mining sector has faced many security difficulties over the past few years.[49]
- **Deforestation -** Deforestation of the Amazon Forest has peaked since 2006. According to the reports of INPE, Between 2020-2021, around 13,235 sq. km. of rainforest were destroyed.[50] Furthermore, the reports stated that the deforestation in January 2022 was five times greater than the 2021 stats. A group of retailers, food suppliers, and investment firms wrote to Brazilian legislators in May 2021, conveying their concern about draft regulations that could endanger the Amazon rainforest. Flora Gaber, ESG Specialist at the Swedish government-owned pension fund AP7 as well as a letter signatory at the time, stated that such action was critical.[51]
- **Greenhouse gas emissions -** Recently, the greenhouse gas emissions in Brazil rose to 12%, and the primary reason can be associated with the increase in the deforestation of the Amazon rainforests.[52] The reports of the SEEG Commission, Brazil has emitted the most greenhouse gas since 2005. According to the stats, there was an emission of 2.42 billion tonnes of Carbon dioxide and its equivalent. The reports stated that Brazil would not be able to reach its climate goals for the year 2025-2030.[53]

Investors and businesses concerned with ESG issues should take special note to Brazil's environmental threats. Investments in corporates that add to deforestation or water pollution

[48] Jennifer Anderson, *Metals & Mining: Brazil's Dam Collapse Underscores Need for Improved Safety Standards*, LAZARD (Mar 9th, 2023, 1:41 pm) https://www.lazardassetmanagement.com/research-insights/investment-research/brazils_dam_collapse_underscores_need_for_improved_safety.html.
[49] *Id.*
[50] Heather Mckenzie, *Halting Deforestation*, ESG INVESTOR (Mar 9th, 2023, 2:51pm) https://www.esginvestor.net/esg-explainer-halting-deforestation/.
[51] *Id.*
[52] Steven Grattan, *Brazil's 2021 climate emissions highest since 2005, report says*, REUTERS (Mar 9th, 2023, 3:08 pm)https://www.reuters.com/world/americas/brazils-2021-climate-emissions-highest-since-2006-report-says-2022-11-01/.
[53] *Id.*

may differ from environmentally responsible practices. Companies that highlight sustainable development, alternative resources, and water recycling can show their commitment to ESG principles while reducing their impact on the environment in Brazil.

### ii. The Green Agenda of Brazil

Brazil's previous government, which concluded on December 31, 2022, took a careless stance on the global agenda, gutting public policies to protect the environment, resulting in significant issues for the country, including uncontrolled deforestation advancement and delays in responding to the global environmental crisis.[54]

In response to the abovementioned scenario, the Federal Supreme Court has elected various actions controlled by the constitution to monitor the activities on the environmental problems that make up the 'Green Agenda' to criticise the government's performance in legislating policies for the betterment of the environment.[55] Four actions address actions of the government and omissions concerning Amazon preservation. The remaining three steps address the legislation's relaxation of ecologic licencing processes, the reduction of civil society involvement with government policies, and the absence of updated air quality criteria in that order.[56]

According to the surveys and data prepared by the Brazilian Association of Business Communication, it was ascertained that 95% of companies prioritise ESG standards. They have implemented programs that result in the reduction of environmental impact, inclusive of actions like waste recycling, conservation of energy, water conservation and others.[57]

### Australia

In Australia, the environmental aspect of ESG goes beyond legislative compliances and includes concepts like sustainable financing and carbon footprints. Australia has enacted a regulation for reporting ESG, which is-

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[54] S.P. Law, *The green agenda in the Brazilian government*, LEXOLOGY (Mar 9th, 2023, 3:32 pm) https://www.lexology.com/library/detail.aspx?g=f19719ab-2e17-49b0-90f7-cc3126c265c1.
[55] *Supra* Note 2.
[56] *Surpa* Note 15.
[57] *Id.*

**National Greenhouse and Energy Reporting Act, 2007 -** lays down a framework that establishes a procedure for reporting and disseminating information related to greenhouse gas emissions, energy consumption, and corporation-producing energies. Furthermore, the act mentions the situations when the reporting of National Greenhouse is required, who administers it, and the safeguard thresholds relating to it.

**Practice Guide on Climate change financial risks -** Furthermore, *the Australian Prudential Regulation Authority* has enacted a draft regulation to direct the banks and other trustees on managing the financial risks associated with climate change.[58] The draft prudential practice guide (PPG 229) was laid down on appeals from different industries to have a clearer picture of regulatory expectations and lay down an example of a practice that can be considered good for handling financial risks.[59] According to the APRA draft consultation, boards as well as institutions may face possible compliance risk if they don't properly consider and react to the effects of climate change. The guidance covers APRA's stance on best practises in managing risk, scenario planning, disclosure, and governance.

## Conclusion

Environmental, Social, and Governance (ESG) finds a place in every modern-day business that operates on a large-scale or on a wider bandwidth. The core essence of ESG lies in the heart of a unanimous undertaking and consensus which is to actively promote eco-friendly policies and practices in the workplace. Such a paradigm shift allows for the working sectors to disengage from anti-environmental action and practices. As stated previously, such a concept transcends beyond just the environmental activism realm. In a day and age which is plagued by environmental concerns and events, it is imperative that the ‘E’ or Environmental component of ESG is given due credence and significance as a form of prerogative to protect interests’ of tomorrow’s generation by strategically safeguarding the resources that are available to today’s generation.

In the present article, an earnest attempt was made by the four authors to *firstly* understand the conceptual meaning of ESG and what each of its individual components stand for.

[58] *APRA guidance offers support on tackling climate- related financial risks*, FINTECH GLOBAL (Mar 9th, 2023, 6:48 pm) https://fintech.global/2021/04/27/apra-guidance-offers-support-on-tackling-climate-related-financial-risks/.
[59] *Id.*

Furthering this approach, we explained how each component overlaps with the other and how the environmental scheme of things is given its due importance as the foremost concern as regards to policy action. *Secondly*, we strived to understand how ESG related regulations, laws and rules are meted out in countries such as the United States of America, United Kingdom, Brazil, Canada to name a few. It was found, based on the research collated, that each of the aforementioned nations had an individualistic position and approach towards incorporating ESG into their legislative frameworks. The ESG regime in the USA was found to be distinct when compared to the European Union (EU) which has adopted pragmatic, practical and conduct-based directives on ESG. However, the USA has undertaken large strides in the recent past, and are on positive course to implementing better nuanced laws. The UK, on the other hand, was found to have a more ideal and established regime which was governed by the UK Corporate Governance Code, the UK Listing Rules, and the Wales Principle. Furthermore, the Companies Act of the country explicitly casts an obligation on the director of a company to act bona fide and consider the environment while taking policy and business actions. We then proceeded to discussing Brazil's structure which is built on solid foundations courtesy concrete provisions enshrined in the Constitution and other legislative instruments such as the National Environmental Policy Law, National Solid Waste Policy Law and Forestry Code.

*Conclusively*, we advanced to India. The Indian legislative framework was found to be fragmented and scattered. It was found that albeit there was no comprehensive, singular law that pertained or focused solely on ESG and its compliances, there were a catena of provisions found in various legislations that more or less pertained to ESG. It was found that the primary focus, under the current Indian regime, was on energy consumption, waste disposal mechanisms and holistic yet strategic consumption and utilization of natural resources.

Climate change is real, and it is now. There lies a heavy burden on manufacturers, factories, businesses and industry players to take into consideration the harms they can potentially cause to the environment by way of corporate action. It is of the utmost imperative that they understand the ramifications of their actions on society and the environment at large. As beneficiaries of large employment teams and widespread public and online visibility, it is all the more imperative for them to act in a manner which reflects mankind's intent and objective to promote and protect the environment for a better tomorrow. There also lies a significant onus on legislators of each nation to formulate laws that integrate the notions, ideals and components of ESG into their legislative framework. Partaking in ESG practices should be mandatory and not voluntary. This way, the businesses and its leaders will be compelled to refrain from engaging in anti-environmental action and activities.

In this regard, we have zeroed in on the following plausible solutions and suggestions to effectuate a more comprehensive and effective framework:

## Suggestions

Given the country's rapid economic growth and its impact on the environment and society, enforcement and compliance with Environmental, Social, and Governance (ESG) standards are becoming increasingly important in India. Here are some ideas for how businesses in India can improve their ESG enforcement and compliance practices:

1. **Create an ESG policy:** The first step towards improved ESG compliance is to create a comprehensive policy outlining the company's commitments and actions in each of the ESG areas. The policy should be concise and measurable, and it should be consistent with the company's overall business goals.
2. **Conduct ESG audits and emphasis on environmental compliances-** Companies should conduct ESG audits on a regular basis to assess their ESG performance and identify areas for improvement. Audits can assist businesses in identifying gaps in their ESG compliance and developing corrective action plans.
3. **Establish ESG targets and metrics:** Companies should establish measurable targets and metrics for each ESG area. These objectives should be aligned with the company's overall business objectives and reviewed on a regular basis to track progress.
4. **Improve transparency and disclosure:** Companies should improve their transparency and disclosure practises by publishing and making available to stakeholders regular ESG reports. These reports should contain detailed information about the company's ESG performance as well as any risks or opportunities related to ESG factors.