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RECALIBRATING PRUDENCE: CLIMATE RISK AND THE FUTURE OF FIDUCIARY STANDARDS

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Abstract

Fiduciary duty has conventionally required asset managers to act with prudence, due diligence, and exclusivity while conferring foremost priority to maximising the financial interests of beneficiaries. Traditionally, the rule of a prudent investor was conformed to, limiting efforts to factoring in only financial risks, and avoiding the subordination of profit to ethical and political objectives. However, contemporary jurisprudence has extended the ambit of the principle to include climate-related financial risks owing to the increasing recognition of climate change as a source of systemic financial risk. Manifestations of climate-induced transformations can be noticed through physical damages, transition costs, stranded assets, and regulatory interventions, raising a foundational question within the fiduciary doctrine: whether disclosure-based regulatory regimes indirectly transform fiduciary standards without formal statutory amendment?

This paper contends that even though fiduciary standards have not been formally amended to legally mandate the inclusion of climate-based risks as a factor in financial materiality assessments, the operative standard of the prudence principle has evolved in the last few decades. Since its inception, fiduciary prudence has been adaptive and sensitive to both financial and non-financial realities and the evolving conceptions of risk. As climate-related financial risks become increasingly salient, the question arises whether fiduciary law is implicitly incorporating them without express statutory reform.

Through doctrinal and comparative methods, the paper thereby seeks to address three issues, namely: first, whether the phenomenon of climate risk has reached a stage where it is sufficient to engage duty of care; secondly, in what ways can fiduciary obligations of asset managers be delivered or adhered to; thirdly, whether emerging disclosure regimes in jurisdictions like the European Union and India are subtly reshaping the normative standards of prudence without formally amending the governing statutory frameworks. Taken together, the paper traces the evolution of prudence within a corporate governance standpoint and accordingly analyses the regulatory frameworks that, in effect, influence the very expectations placed on asset managers.

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It concludes with the thought that it is theoretically and practically untenable in modern times to maintain neutrality toward climate risk and its interdependence with fiduciary prudence.

Keywords: fiduciary duty, prudent investor rule, corporate governance, financial risk, climate disclosure regulation

I. Climate Risk and the Problem of Fiduciary Prudence

The concept of fiduciary relationship dates back to one of the most ancient and entrenched obligations in the sphere of private law. Fundamentally, it demands that those entrusted with the duty of managing the assets of others act with undivided loyalty, integrity, stewardship, candour, and prudence calibrated to the maximum financial interests of the beneficiaries. For much of modern corporate history, the principle of prudence was interpreted in narrow and orthodox terms. However, the growing recognition of climate change as a source of systemic financial risk has reshaped this understanding.

In Harvard College vs Amory[1]Justice Putnam famously held that a trustee must conduct themselves as a prudent man would, observing how men of prudence and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds[2]. This provision paved the way for the codification of fiduciary prudence across select common and civil law jurisdictions for nearly two centuries. This decision established prudence as a flexible and context-sensitive standard concerned with preservation and management of financial value instead of rigid investment conservatism.

Furthermore, the orthodoxy hardened considerably in Cowan vs Scargill[3], where Megarry VC held that the sole duty of trustees is to exercise their powers in a manner that results in the best interests of present as well as future beneficiaries. In the case of pension funds, it would unequivocally mean their best financial interests. However, the non-financial considerations would be subordinate to and effectively excluded until they had a direct correlation with financial relevance. This decision strongly affirmed that the principle of prudence or fiduciary law rested on financial rationality, subordinating non-financial considerations unless they bore direct financial relevance.

[1] Harvard Coll. v. Amory, 26 Mass. (9 Pick.) 446, 461 (1830)
[2] id
[3] *Cowan v. Scargill*, [1985] Ch. 270, 286–87 (Eng.)

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In recent years, with the growing prominence of issues like climate change, consensus on the principle has come under significant strain. Climate change has brought with it a source of systemic and material financial risks that the traditional principle and standards are neither equipped nor designed to address. These risks manifest in several forms, including physical damage[4] – whether through natural calamities, or disruption to supply chains[5], and transition risks[6] while shifting towards low-carbon emission technologies that could be regulatory, technological, legal, or based on changing market sentiment[7]. Climate shocks may also manifest as increased default risk within loan portfolios or declining valuations of exposed assets[8]. Increasingly, it is also recognised as generating litigation and liability risks as governments, investors, and private entities seek to hold major emitters accountable for harms caused by climate. These risks are capable of affecting asset valuations, credit exposure, portfolio performance, and long-term economic stability[9]. The increasing financial materiality of climate risk is reflected in the findings of the Sustainability Accounting Standards Board, which concluded that climate-related risks are likely to have material financial impacts across seventy-two of seventy-nine industries, representing approximately ninety-three per cent of the U.S. equity market. Given the systemic character of such risks, investors cannot readily diversify away from them, reinforcing their relevance to prudent investment decision-making. Collectively, this indicates that these risks don't merely sit at the periphery of financial analysis but increasingly form part of the ordinary assessment of financially material risks.

Doctrinally, this crystallises a problem that is both precise and consequential. Fiduciary law or duty, as conventionally understood, has not undergone formal amendment procedures with the motive of incorporating climate-related considerations. Neither has the prudent investor standard been formally amended, nor has any decision overruled Cowan vs Scargill. However,

[4] Grippa, Pierpaolo, Jochen Schmittmann & Felix Suntheim, *Climate Change and Financial Risk*, 56 Fin. & Dev. 26 (Dec. 2019). https://www.imf.org/en/publications/fandd/issues/2019/12/climate-change-central-banks-and-financial-risk-grippa

[5] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* 8–20 (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf

[6] Mark Carney, Governor, Bank of Eng., *Breaking the Tragedy of the Horizon—Climate Change and Financial Stability* (Sept. 29, 2015), https://www.bankofengland.co.uk/-/media/boe/files/speech/2015/breaking-the-tragedy-of-the-horizon-climate-change-and-financial-stability.pdf

[7] Climate Policy Initiative, *Climate-Related Financial Risk: How, When, and for Whom?* (2020), https://www.climatepolicyinitiative.org/climate-related-financial-risk-how-when-and-for-whom/

[8] Grippa et al., *Climate Change and Financial Risk*, supra note 4

[9] Network for Greening the Financial System, *Climate Change, the Macroeconomy and Monetary Policy* (Oct. 2024 https://www.ngfs.net/sites/default/files/medias/documents/ngfs_climate_change_macroeconomy_and_monetary_policy_-_final.pdf

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most notably, regulatory changes have been noticed in two jurisdictions specifically - the European Union's Sustainable Finance Disclosure Regulation[10] and India's Business Responsibility and Sustainability Reporting[11] framework. These frameworks discuss disclosure obligations that operationally integrate climate risk into the investment decision-making process by the stakeholders. The question is whether these frameworks are effectively reshaping the normative content of prudence.

Against this backdrop, the paper examines whether disclosure-based regulatory frameworks are progressively reshaping the operative content of fiduciary prudence despite the absence of formal statutory amendment.

II. The Evolving Prudence Standard: From Financial Orthodoxy to Systemic Risk

The rule of prudence has never been a static regulatory framework and has been continually responsive to changing circumstances[12]. At its very core, it has been a relational standard established on what would be deemed reasonable and well-informed in the given prevailing circumstances. Contextual responsiveness and adaptability are not weaknesses but core competencies acting as a backbone to its structural features. What the orthodox reading of *Harvard College v Amory* and *Cowan v Scargill* obscures is that fiduciary prudence has expanded before, repeatedly, in response to new financial and economic realities - and each time without any formal proclamation that the standard had fundamentally changed. Climate change and its risks are not the first variable that test the limits of the fiduciary doctrine. Nonetheless, it is the latest chapter in the story, and appreciation of the previous chapters is essential in evaluating whether its incorporation into fiduciary analysis represents a genuine doctrinal rupture or the continuation of an evolutionary logic already embedded within the law itself.

[10] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 Nov. 2019 on Sustainability-Related Disclosures in the Financial Services Sector, 2019 O.J. (L 317) 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R2088

[11] Securities & Exchange Bd. of India, *BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain*, Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 (July 12, 2023), https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html

[12] Susan N. Gary, Keith L. Johnson & Nicholas W. Zuiker, *The Essential Investor Fiduciary Duties That Courts and Policymakers Often Miss*, Colum. L. Sch. Blue Sky Blog (June 27, 2025), https://clsbluesky.law.columbia.edu/2025/06/27/the-essential-investor-fiduciary-duties-that-courts-and-policymakers-often-miss/

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The standard of a classical prudent man as iterated in Harvard College vs Amory and later reflected through the Model Prudent Man Rule Statute of 1942, closely and firmly associated prudence with capital preservation and the avoidance of speculative risk. The Prudent Man Rule essentially required trustees to apply a standard of "prudence, discretion, and intelligence" in managing the individual investments of the trust[13]. It directed trustees to manage their own affairs, not in respect of speculation but in regard to the permanent disposition of their funds, considering the probable income as well as probable safety of the capital to be invested[14]. However, it remained unclear what the terms "care, skill, and caution" meant, with investors eventually interpreting the rule to mean that they should invest in the safest investments possible[15]. Trustees thereby gravitated towards government bonds, fixed-income instruments, and first mortgages[16]. At this stage, prudence was effectively synonymous with the avoidance of risk rather than its intelligent management. Heightened standards of care were maintained but the underlying orientation remained one of caution as against deploying resources for maximising long-term returns.

Heavy bond allocation and the avoidance of equities, which were previously considered prudent, became harmful to both income and remainder beneficiaries in the 1970s and 80s[17]. Exposing the shortfalls of an investment standard that evaluated prudence at the level of individual assets instead of the performance of the portfolio as a whole prompted a reconceptualisation of fiduciary investment law in line with modern portfolio theory. Consequently, the American Law Institute's Restatement (Third) of Trusts in 1992[18], and the Uniform Prudent Investor Act of 1994[19] were enacted, laying down novel standards for redefining the rule of prudence. The Restatement stated that a trustee must invest and manage assets as a prudent investor and evaluate investments not in isolation but as part of the overall portfolio and investment strategy[20]. The Prudent Investor Act reflected a modern portfolio theory and total return approach to the exercise of fiduciary investment discretion, requiring

[13] Jeremy Lau, *The Prudent Investor Rule and UPIA: Intro to Trustee Investing*, Prudent Invs. (Apr. 26, 2023), https://www.prudentinvestors.com/blog/the-prudent-investor-rule-and-upia-intro-to-trusting-investing/
[14] Centre for Climate Engagement, Univ. of Cambridge, *Summary Report: Investors' Fiduciary Duties and Systemic Climate Risks* (2024), https://www.cisl.cam.ac.uk/resources/sustainable-finance-publications/summary-report-investors-fiduciary-duties-and-systemic-climate-risks
[15] Lau, *The Prudent Investor Rule and UPIA*, supra note 13
[16] Cary & Bright, *Prudent Investments*, 12 Real Property, Probate and Trust Journal 243 (1977)
[17] Lenore Palladino, *A Public Option for Asset Management in the United States* (Roosevelt Inst., Apr. 2022), https://rooseveltinstitute.org/wp-content/uploads/2022/04/RI_PublicOptionForAssetManagementUS_202204.pdf
[18] Restatement (Third) of Trusts (Am. L. Inst. 1992)
[19] Uniform Prudent Investor Act (Unif. L. Comm'n 1994)
[20] Restatement (Third) of Trusts § 90 (Am. L. Inst. 1992)

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risk versus return analysis, and measuring a fiduciary's performance on the performance of the entire portfolio rather than individual investments[21]. Greater emphasis is given to the overall reasonableness of the portfolio with regard to the investor's risk and return objectives. This revision was achieved not through a formal reformulation of the underlying principle but through a revised understanding of what prudent investment management required owing to the prevailing financial circumstances. The precedent settled would later prove durable: prudence adapts when the conception of risk itself has transformed.

Over the following decade, this position gained further traction owing to the UK Law Commission's 2014 report on fiduciary duties of investment intermediaries[22]. The report declined to recommend statutory reform, noting that existing law was already equipped to function with ESG integration wherever financial materiality could be established. By 2015, the Principles for Responsible Investment and UNEP FI went further still, concluding in their *Fiduciary Duty in the 21st Century*[23] report that failing to consider all long-term investment value drivers, including ESG issues, is a failure of fiduciary duty. The *Prudent Investments*[24] Paper had observed, decades earlier, that the prudent man rule's greatest strength was its capacity to accommodate itself to "changing times and circumstances." The years that followed saw this institutional consensus translate into regulatory architecture: the European Parliament adopted the Corporate Sustainability Reporting Directive[25] in November 2022, updating the 2014 non-financial reporting directive to expand detailed reporting requirements relating to ESG.

Therefore, what history reveals is a pattern of consistent and incremental expansion with each stage driven not by legislative upheavals but by the progressive recognition of a new category of risk that had achieved sufficient financial salience to fall within the existing concept of prudence. Beginning from the individual-asset conservatism of the 19th century through the professionalisation of trusteeship in the mid-20th century, to the portfolio revolution in the

[21] Centre for Climate Engagement, *Investors' Fiduciary Duties and Systemic Climate Risks*, supra note 14
[22] Law Comm'n, *Fiduciary Duties of Investment Intermediaries*, Law Com No. 350 (2014)
[23] U.N. Env't Programme Fin. Initiative & Principles for Responsible Inv., *Fiduciary Duty in the 21st Century: Global Statement on Investor Obligations and Duties* (2020), https://www.eticanews.it/wp-content/uploads/2020/06/Fiduciary-Duty-21st-Century-Global-statement-on-investor-obligations-and-duties.pdf
[24] Robert H. Sitkoff & Max M. Schanzenbach, *Prudent Investor Rule and Market Risk: An Empirical Analysis* (Harv. Pub. L. Working Paper No. 15-06, Nw. Pub. L. Res. Paper No. 15-16, John M. Olin Ctr. for L., Econ. & Bus. Discussion Paper No. 816, Mar. 20, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2583775
[25] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 Dec. 2022 Amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting, 2022 O.J. (L 322) 15, https://eur-lex.europa.eu/eli/dir/2022/2464/oj/eng

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1990s and the ESG materiality debates of the 21st century, the prudence standard has evolved, continually adapted, and accommodated what well-informed fiduciaries are expected to know and act upon. At the frontier of that process now stands climate change. Against this backdrop, what remains to be answered by this paper is not whether prudence is capable of accommodating this obstacle – evolutionary logic suggests it already has, but whether disclosure-based regulatory systems, particularly in India and the European Union, are reshaping fiduciary presence in response to financial risks posed by climate change. Whether they are accelerating in ways that constitute a de facto transformation of the normative standard, without requiring any legislature to have formally stated so.

III. Disclosure Regimes and the Indirect Transformation of Fiduciary Norms

The indirect mechanism of accommodating climate risk rests on the accumulation of mandatory disclosure obligations that integrate climate risk assessment into investment decision-making as a matter of regulatory compliance. By means of regulatory compliance, a formal legislative amendment is not deemed to be necessary; rather, it operates below the statutory reform as a matter of consequence. Non-compliance with the norms of this regulatory mechanism may then pose ethical criticisms and be viewed as inconsistent with the fiduciary principle. This chapter seeks to address whether that consequence leads to a transformation of the prudence standard in substance, even when it has not manifested in form.

The direct route of statutory amendments of fiduciary duties has proven to be politically and doctrinally restrictive, making the indirect method imperative.

According to the Maximisation Model of fiduciary duty, as observed by Professor Eric Orts, corporate directors and institutional investors remain legally obligated to prioritise profit maximisation with climate considerations relegated to the status of what Professor Roberto Tallarita, drawing on Wesley Hohfeld's jurisprudential framework, characterised as a "privilege" rather than a "duty[26]" - something that may sometimes be permitted but is not yet required. The European Union, on the other hand, appeared ready to adopt an EU-wide change in corporate fiduciary duties as part of its Green Deal legislation that would legally include

[26] Roberto Tallarita, *Hohfeld in the Boardroom* (Harv. Pub. L. Working Paper, July 13, 2025), https://ssrn.com/abstract=5349969

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climate change as a parameter of analysing financial strength. But, that proposal was very shortly after rolled back before a formal statutory amendment could take place, reiterating that the formal amendment route has stalled while the disclosure route has not.

The Netherlands offers the most instructive comparator — a jurisdiction that attempted judicial transformation rather than disclosure-based transformation, and whose experience illuminates both the possibilities and the limits of that path. In 2021, the Hague District Court handed down its landmark decision in *Milieudefensie et al v Royal Dutch Shell*[27], finding that there is an unwritten standard of care with which Shell must comply, and that the content of this standard of care is informed by the best available science, the widespread international consensus that human rights can protect people from the impacts of dangerous climate change, and companies' obligation to respect human rights[28]. The Dutch courts have thereby demonstrated that judicial imposition of specific climate obligations on corporations is both legally possible and practically constrained.

The disclosure-based regulatory model pursued by the EU and India operates differently — not by imposing specific obligations through litigation, but by constructing an informational architecture within which climate risk non-consideration becomes progressively indefensible as a matter of professional practice.

The European Union's Sustainable Finance Disclosure Regulation, in force since March 2021, is architecturally the most significant, requiring financial market participants to disclose how they consider sustainability risks that can affect the value of and return on their investments. Disclosures are structured both at the level of the firm as a whole and in relation to specific financial products. Interestingly, this framework does not mandate that market participants invest in consonance with green criteria, but justify, publicly and consistently, whatever approach to sustainability they have chosen to adopt[29]. The EU, in this way, has strategically avoided direct confrontation with fiduciary orthodoxy, while only mandating disclosure of

[27] ECLI:NL:RBDHA:2021:5339
[28] Cynthia Hanawalt & Andy Fitch, *Varied Legal Parameters Shape Fiduciaries' Ability to Act on Climate Risk* (Sabin Ctr. for Climate Change L., Columbia L. Sch., July 2025), https://scholarship.law.columbia.edu/sabin_climate_change/
[29] Eur. Comm'n, *Sustainability-Related Disclosure in the Financial Services Sector* (Nov. 20, 2025), https://finance.ec.europa.eu/sustainable-finance/disclosures/sustainability-related-disclosure-financial-services-sector_en

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consideration as a formal basis[30]. This disclosure requirement distinguishes funds subject to differing sustainability-related disclosure obligations. Although it does not mandate any particular investment outcome, it requires market players to justify and disclose their approach. Asset managers designate each of their funds under Article 6[31] or 8[32] or 9[33], and then comply with the corresponding disclosure obligations that the article imposes. This, in turn, makes climate risk non-consideration a visible, documented, and publicly contestable position.

The Indian experience offers a revealing counterpoint. Where the SFDR operates in a mature capital market with sophisticated institutional investors already internalising sustainability expectations, the BRSR framework is doing something more foundational - it is constructing the informational infrastructure through which fiduciary expectations around climate risk will eventually become professionally inescapable in an emerging market context. In May 2021, the Securities and Exchange Board of India introduced the Business Responsibility and Sustainability Reporting framework, essentially requiring India's top 100 listed companies by market capitalisation to publish mandatory BRSR reports covering quantifiable data on emissions, energy usage, waste, human rights, and the ESG practices of value chain partners. This framework finds its origin in the 2009 Voluntary Guidelines on Corporate Social Responsibility by the Ministry of Corporate Affairs and found itself evolving for more than a decade through the National Voluntary Guidelines. In 2023, SEBI introduced the BRSR Core - a refined subset of key performance indicators focused on measurable climate and social metrics, including absolute and intensity-based greenhouse gas emissions, renewable energy share, and water use, with a phased glide path for mandatory third-party assessment beginning with India's 150 largest companies and expanding to the top 1,000 listed firms by the financial year 2026-27. The IEEFA has observed directly that regulators including SEBI and PFRDA

[30] Institutional Invs. Grp. on Climate Change, *EU Clarifies Sustainable Finance Disclosure Regulation (SFDR) with a Word of Caution for Investors* (Apr. 26, 2023), https://www.iigcc.org/insights/eu-clarifies-sustainable-finance-disclosure-regulation-sfdr-with-a-word-of-caution-for-investors

[31] Article 6 of the SFDR covers all funds that do not promote sustainability characteristics and funds under these must simply disclose how sustainability risks are integrated into investment decisions or explain why such risks are not relevant.

[32] Article 8 covers funds that promote environmental or social characteristics as part of their investment strategy provided that the companies in which they invest follow good governance practices. Sustainability is not a primary objective of this fund, all that is required is the active promotion of these characteristics alongside financial returns. Article 8 never defined "promote" and never gave asset managers a clear quantitative threshold for what qualifies as a sustainable investment under Article 9. This deliberate ambiguity combined with the absence of an official EU labelling regime, allowed the market to treat these categories as quality rankings rather than disclosure classifications.

[33] Article 9 covers funds that have sustainable investment as their explicit primary objective – here, every investment must qualify as a sustainable investment, and the fund must demonstrate that it causes no significant harm to other environmental or social objectives.

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can refine their Stewardship Code in line with evolving sustainability and climate risk disclosure requirements, and that a green transition of the economic system requires a corresponding transition of the financial system - one that begins precisely with the duty and standard of care encompassed under fiduciary duty. The doctrinal significance of this is not merely that Indian companies must now disclose climate data - it is that asset managers investing in those companies now have access to standardised, auditable, and publicly comparable climate risk information they cannot credibly claim to have ignored. The BRSR framework is thereby constructing, with deliberate gradualism, the infrastructural capabilities upon which enhanced fiduciary expectations may rest. In doing so, it renders climate-risk non-consideration documented and a visible departure from emerging professional norms, much as the SFDR has done with the EU.

The doctrinal significance of comparing the EU and Indian frameworks lies not in their symmetry — they are at markedly different stages of regulatory maturity — but in what their shared structural logic reveals about the mechanism by which disclosure regimes transform fiduciary norms without formally amending them. Both frameworks operate through what might be termed regulatory norm displacement: the process by which mandatory disclosure obligations, without directly amending substantive legal duties, progressively redefine what counts as professionally acceptable conduct within a regulated field. When mandatory disclosure frameworks require asset managers to assess, document, and publish their approach to climate risk, they do not merely create reporting obligations - they reshape the professional baseline against which prudence is measured. An asset manager who ignores climate risk is no longer simply making a defensible conservative investment choice. They are departing from the documented and publicly visible practice of their professional peers, in a regulatory environment that has made that departure both visible and contestable.

IV. Operationalising and Enforcing Fiduciary Duties in the Climate Era

Establishing that disclosure regimes are reshaping the principle of prudence is quite different from demonstrating how this reshaping translates into the practical conduct of asset managers. Risks that necessitate this operationalisation are not abstract. As documented by the IMF, climate change affects the financial system through two primary channels: physical risks such as extreme weather conditions and rising sea levels, and transition risks such as technological

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advancement, policy changes, and evolving market preferences[34]. These risks are not peripheral – they are systemic and cross-sectoral, and their financial materiality is what gives the operationalisation its urgency. Their effects are capable of influencing portfolio performances, credit and asset valuations, and broader market stability[35]. As the risks pose a threat to the investment outcomes, they move beyond the ambit of environmental concerns and constitute a part of the duties an ordinary fiduciary would be expected to consider.

An obstacle, however, is that recognition of climate risk as financially material does not automatically translate into investment decision-making in practice. Companies producing negative environmental externalities frequently do not bear the cost of resulting damages and even where clearly established by theory, it does not automatically translate into a change in investment behaviour[36]. If carbon costs can be passed downstream to consumers through contractual arrangements and bargaining power, investors may rationally discount this risk. It is precisely this gap between acknowledged risk and operationalised response, that fiduciary duty is intended to bridge.

For doing so, active stewardship is considered favourable,[37] promoting the use of investor rights to engage with, influence, and, where necessary, vote against the boards of portfolio companies on climate grounds[38]. Unlike firm-specific risks, climate-related risks operate at a market level and are not easily diversifiable. Thus, they may affect the overall performance of the portfolio rather than a single investment. Consequently, such risks cannot be mitigated through conventional diversification alone and require specific mechanisms through which long-term portfolio values could be protected. Increasingly, investors and governance

[34] IMF Comm. on Balance of Payments Stat., *B.6 Sustainable Finance: Integrating Measures of Climate Change Risk into External Sector Statistics* (Int'l Monetary Fund), https://www.imf.org/-/media/files/data/statistics/bpm6/approved-guidance-notes/b6-sustainable-finance-integrating-measures-of-climate-change-risk-into-external-sector-statistics.pdf

[35] tr. for Climate & Energy Sols., *Redefining Fiduciary Duty: Climate Risk, Stewardship, and the Transition Imperative* (Aug. 2025), https://www.c2es.org/wp-content/uploads/2025/09/Fiduciary_Duty.pdf

[36] U.N. Env't Programme Fin. Initiative & Freshfields Bruckhaus Deringer, *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment* (Oct. 2005), https://www.unepfi.org/wordpress/wp-content/uploads/2022/07/Freshfields-A-legal-framework-for-the-integration-of-ESG-issues-into-institutional-investment.pdf

[37] Institutional Invs. Grp. on Climate Change, *Building Resilience to a Changing Climate: Investor Expectations of Companies on Physical Climate Risks and Opportunities* (Sept. 2021), https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC%20Investor%20Expectations%20of%20Companies%20on%20Physical%20Climate%20Risks%20and%20Opportunities%20Sept2021.pdf

[38] U.N.-Convened Net-Zero Asset Owner All., *The Future of Investor Engagement: A Call for Systematic Stewardship to Address Systemic Climate Risk* (Apr. 2022), https://www.unepfi.org/wordpress/wp-content/uploads/2023/08/NZAOA_The-future-of-investor-engagement.pdf

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frameworks expect directors and fiduciaries to treat climate risk like any other financially material risk requiring governance, expertise, oversight, monitoring, and board-level engagement[39]. Stewardship therefore emerges as a potentially effective mechanism enabling fiduciaries to manage risks that cannot otherwise be eliminated through conventional strategies. Through ongoing engagement with investee companies, institutional investors can monitor corporate responses to climate-related risks and escalate concerns through shareholder resolutions, voting strategies, or opposition to proposals. Such corporate engagement functions as an accountability mechanism enabling investors to monitor and influence corporate responses to risks of this nature. The Centre for Climate Engagement's 2024 report[40] on fiduciary duties and systemic climate risks identifies precisely such tools as constituting an emerging spectrum of stewardship practices available to fiduciaries. Significantly, the report treats these mechanisms not merely as ESG initiatives but as practical governance tools through which fiduciaries may address financially material risks that cannot be mitigated through diversification alone. The EU's IORP II Directive[41] has formalised this expectation by explicitly requiring pension funds to consider ESG factors in risk management[42], establishing a regulatory baseline for investment stewardship that aligns operational practice with the disclosure obligations examined in Section III. The EU's stewardship architecture is further reinforced by the Shareholder Rights Directive II, essentially requiring investors and asset managers to disclose how they monitor investee companies, exercise voting rights, and integrate relevant risks into stewardship activities. Although it does not impose substantive obligations, it reinforces expectations that risks be actively monitored and engaged with. On the Indian front, the SEBI Stewardship Code[43] requires institutional investors to monitor investee companies, engage with management, formulate intervention and escalation policies, exercise voting rights, and publicly disclose stewardship activities. While not designed for

[39] Institutional Invs. Grp. on Climate Change, *Building Resilience to a Changing Climate: Investor Expectations of Companies on Physical Climate Risks and Opportunities* (Sept. 2021), https://139838633.fs1.hubspotusercontent-eu1.net/hubfs/139838633/Past%20resource%20uploads/IIGCC%20Investor%20Expectations%20of%20Companies%20on%20Physical%20Climate%20Risks%20and%20Opportunities%20Sept2021.pdf

[40] Centre for Climate Engagement, *Summary Report: Investors' Fiduciary Duties and Systemic Climate Risks* (2024), https://climatehughes.org/wp-content/uploads/2024/09/Summary-Report_designed2.pdf

[41] European Union (EU) Directive 2016/2341

[42] Eur. Ins. & Occupational Pensions Auth., *EIOPA Issues Opinions on Governance and Risk Management of Pension Funds* (July 10, 2019), https://www.eiopa.europa.eu/eiopa-issues-opinions-governance-and-risk-management-pension-funds-2019-07-10_en

[43] Securities & Exchange Bd. of India, *Stewardship Code for All Mutual Funds and All Categories of AIFs, in Relation to Their Investment in Listed Equities*, Circular No. SEBI/HO/IMD/DF4/CIR/P/2019/160 (Dec. 24, 2019), https://www.sebi.gov.in/legal/circulars/dec-2019/stewardship-code-for-all-mutual-funds-and-all-categories-of-aifs-in-relation-to-their-investment-in-listed-equities_45451.html

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climate risks particularly, it provides a framework through which financially material climate-related risks could be monitored and acted upon by fiduciaries. Read alongside the Business Responsibility Sustainability Report, a framework that came into effect in 2023, creates the informational foundation upon which stewardship obligations can operate; the Stewardship Code creates a mechanism through which such information may be translated into active investor oversight and engagement. The BRSR does not impose climate fiduciary duties rather, requires companies to disclose quantitative metrics on greenhouse gas emissions, energy consumption, climate-related initiatives, governance and risk-management practices, and value-chain sustainability indicators, making information standardised, comparable, and publicly available[44]. The significance of BRSR lies not merely in disclosure itself, but in the standardisation of climate-related information. Once emissions, energy usage, and climate-related governance practices become publicly available in a comparable format, institutional investors are increasingly deprived of the argument that such risks were unknowable or incapable of assessment. In this respect, the Code performs a function analogous to the EU's stewardship framework by encouraging investors not merely to receive sustainability information but to engage with investee companies regarding material risks disclosed through BRSR reporting.

Yet, stewardship and disclosure frameworks remain primarily preventive and governance-oriented. Their effectiveness rests upon the accountability structures capable of responding when fiduciaries fail to adequately consider financially material climate risks.

The enforcement question, however, reveals the limits of stewardship as a self-sufficient mechanism. Litigation has emerged as a secondary enforcement channel, though with decidedly mixed results. In Australia, *McVeigh v Retail Employees Superannuation Trust*[45] saw a beneficiary claim that a superannuation fund had breached its legal obligations by failing to disclose climate risks and plans to address them — a case that settled before judgment but demonstrated the growing willingness of beneficiaries to challenge trustees over climate-risk disclosure and management. In the United Kingdom, *McGaughey and Davies v Universities Superannuation Scheme Ltd*[46] represented the first UK attempt to bring a derivative action by pension scheme beneficiaries against trustee directors personally for failing to formulate a

[44] IBM, *The Indian Business Responsibility and Sustainability Report (BRSR) Explained*, https://www.ibm.com/think/topics/brsr
[45] *McVeigh v Retail Employees Superannuation Trust* [2019] FCA 14
[46] *McGaughey and Davies v Universities Superannuation Scheme Ltd* [2023] EWCA Civ 873

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credible fossil fuel divestment plan. The claimants argued that continued investment in fossil fuels constituted a breach of directors' statutory and fiduciary duties, and that fossil fuel assets were the worst-performing assets in the scheme's portfolio since 2017. The Court of Appeal dismissed the appeal on all grounds, holding that, on the face of it, there was no demonstrated loss to the corporate trustee as a result of the directors' approach to fossil fuel investment. The case nonetheless carries significant doctrinal weight: it illustrates the potential for scheme trustees to face legal challenges to their investment policy as regards climate change-related issues — and the Centre for Climate Engagement's observation that fiduciary duty may function more powerfully as a shield than a sword captures the practical lesson precisely. Demonstrating the link between systemic climate risks and long-term portfolio performance protects trustees from short-termist pressure; failing to demonstrate it, as McGaughey suggests, creates exposure that beneficiaries are increasingly willing to test in court.

The significance of these developments and mechanisms lies not in the creation of new fiduciary duties, but in the regulatory techniques through which existing duties are being reshaped. Through an integrated system in the European Union comprising the SFDR, and IORP II Directive, the intention to institutionalise the financial materiality of these risks is reflected. India, on the other hand, has adopted a more gradual and relaxed approach through the BRSR and SEBI Stewardship Code, creating the informational and governance infrastructure necessary for investors to identify, assess, and engage with climate-related risks. Although the institutional mechanisms differ, both jurisdictions are moving toward a model in which climate-risk consideration is increasingly treated as an ordinary component of prudent investment management rather than a voluntary sustainability preference.

V. Conclusion: The Quiet Recalibration of Fiduciary Prudence

The fiduciary prudence standard has never announced its own transformation. It has reshaped, as this paper has traced, through revised investment theory, institutional guidance, regulatory architecture, and the slow accumulation of professional expectation. Climate risk represents the latest and most consequential instance of that movement.

This paper has argued that the operative standard of prudence has evolved without formal statutory amendment. The historical record of Section II demonstrates that this is not unprecedented by tracing that the prudence standard absorbed Modern Portfolio Theory in the 1990s and ESG materiality in the 2000s through precisely the same mechanism of regulatory

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and institutional pressure rather than legislative decree. Sections III and IV reflect that climate risk is being incorporated through the same mechanism. The EU's SFDR and India's BRSR are replicating that mechanism at scale, constructing an informational architecture within which fiduciary duties are not being formally amended, yet regulatory frameworks require full disclosure and assessment on a scale that makes non-consideration increasingly difficult to justify. Through these mechanisms being further strengthened by emerging litigation, operationalisation is incomplete, but real and accelerating.

What the EU-India comparison ultimately reveals is that this transformation is not contingent on a particular level of market sophistication or regulatory maturity. It is a structural consequence of mandatory climate risk disclosure wherever it is imposed. The mechanism does not require deep capital markets to function but only that disclosure obligations make ignorance visible and professionally costly. To ignore climate risk today is not a conservative act of fiduciary discipline. It is, increasingly, a failure of the very contextual intelligence that prudence has always demanded. The recalibration is quiet. But it is no longer deniable.