



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CORPORATE GREENHOUSE GAS DISCLOSURE

NORMS: -A STUDY OF THE REGULATORY

FRAMEWORK IN INDIA, USA & U.K.

AUTHORED BY - AYUSHI LAKSHMI VERMA
& KAVYA MAHESHWARI

INTRODUCTION

Climate change today is no longer a mere boardroom discussion topic. Rather, the risks associated with it have become real now much more than ever before. Climate change is majorly attributed to the rapid increase in industrial development and capitalization. It is undoubted that companies which run industries and factories are at the center stage of either pushing the Earth to the brim of existential crisis or to save it from unforeseeable peril. It is at this point a sustainable and environment friendly way of production, manufacturing and working of companies is desired.

Investors must be aware of the risks associated with climate change in order to make wise short- and long-term investment decisions because it has the potential to significantly impact both individual companies' operations and the operations of the world's capital markets, both directly and indirectly.¹ Also, it is important to note here that the risks associated with climate change will not be limited to the vulnerable industries only, rather the indirect impacts would be felt by the entire global economy. As such, the investors “cannot just ignore climate risks by moving out of vulnerable asset classes.”² Another distinctive feature of the threats linked to climate change is that it is cumulative over time. A report released in 2014 highlighted that “if there is inaction on part of the nations in lowering GHG emissions presently, decision makers put in place processes that increase overall risks tomorrow, and each year those ineffective decision made will lead to broaden and deepen risks associated.”³

There are five possible ways in which climate change can affect the working of a company.

¹ Roshan Wasim, *Corporate (Non)Disclosure of Climate Change Information* 119 COLUMBIA LAW REVIEW 1311, 1321 (2019).

² Peter McKillop, *Cornerstone Capital's New Framework for Climate Investing*, CLIMATE AND CAPITAL MEDIA (Apr 17, 2020) available at <https://www.climateandcapitalmedia.com/topic-asset-management/>.

³ Gary F. Peters and Andrea M. Romi, *Does the Voluntary Adoption of Corporate Governance Mechanisms Improve Environmental Risk Disclosures? Evidence from Greenhouse Gas Emission Accounting* 125 JOURNAL OF BUSINESS ETHICS 637, 643 (2014).

1. *Supply Chains being disrupted:*

Climate change has the ability to create such physical impacts that could disrupt the entire supply chain of goods and services and impact the operations of the companies. These physical impacts could be in the nature of increased sea levels, increased incidents of forest fires, non-arable lands, shortage of water supply etc. it could also be sudden catastrophic events like an earthquake or cyclones- the frequency of which keeps rising. *“An increase in the incidence and severity of extreme weather and climatic conditions is particularly troublesome because the financial liabilities associated with such happenings appear to rise rapidly with their intensity.”*⁴

2. *Increased Cost of Compliance.*

With the increase in climate change related events comes increased regulations by the State to prevent the frequency of such events. Environmental rules may interfere with a firm's plans for the future, including decisions regarding investments and locations, and they may force a corporation to adopt new procedures, which could raise production costs while lowering productivity.⁵ For example, *“restrictive air quality controls, such as rules governing ozone layer, can have the intensity to decrease a manufacturing plant’s productivity by five percent in toto, which represents an annual cost of around \$21 billion to the entire manufacturing sector in an economy.”*⁶

3. *Impact on Corporate Reputation:*

With an increase in awareness among the general public and the stakeholders about environmental concerns and issues, a company may have to suffer financially if it develops an adverse reputation in relation to drastic climatic changes.

The SEC has recognized this as a potential risk indirectly hampering the interests, noting that *“depending on the nature of a company’s business and its thoughtfulness to public opinion, a company may have to observe on whether the public’s vigilance of any publicly available information relating to its GHG emissions could expose it to exponential consequences.”*⁷

⁴ Justin Worland, *Climate Change Could Spark Another Great Recession. This Time, It May Be Permanent*, TIME (2017), available at <http://time.com/4837020/climatechange-economy-recession/>.

⁵ Michael Greenstone & John A. List, *The Effect of Environmental Regulation on the Competitiveness of U.S. Manufacturing* 31 NAT’L BUREAU OF ECON. RESEARCH, Working Paper No. 18, 392 (2012). <https://www.nber.org/papers/w18392.pdf>.

⁶ Kishanthe Parella, *Reputational Regulation*, 67 DUKE L.J. 907, 913 (2018).

⁷ *Supra* note 5, at 399.

4. *Increased Risks for Particular Industries.* The SEC has identified specific sectors related products and services that may be disproportionately affected by drastic climate change and the accompanying environmental regulatory regime, such as those that produce large amounts of greenhouse gas emissions, those that are connected to carbon-based energy sources, and those that are involved in the production and transmission of energy from alternative sources.⁸ The most prominent example of this is the oil and petroleum industry which faces increased risks from the physical impacts of climate change. “Till 2014, 86% of the oil refineries in the US were located within ten feet of the local high tide line, making them exposed to extreme weather conditions and climate-associated risks like rising sea levels”.⁹ Furthermore, some sectors, such as the energy industry, may be in particular more susceptible to being subjected to legislation or regulation relating to greenhouse gas emissions given the nature of business.

Research Problem

In the month of March last year, the Securities Exchange Commission which is the regulatory body responsible for supervising the corporate sector in USA, put forth a regulation that would require businesses to report their greenhouse gas emissions. Nearly all publicly listed companies would be required by the law to publish their GHG emissions, even if such emissions were not in themselves material to the investors. The Paris Agreement which was materialized in 2015 is one of the sole international efforts to curb emissions in order to reduce the greenhouse gas content on Earth. Several countries, including India put forth their targets to reduce the amount of Greenhouse Gas (hereinafter referred to as GHG). India set a target of reducing its GHG emissions to zero by 2070. Therefore, in the light of the same it is imperative to study as to what are the laws governing corporations with respect to reduction of emissions and how is the current regulatory framework going to help India in achieving this ambitious target. Good Corporate Governance would form the backbone of companies in helping them meeting the compliance requirements, adhering to the environmental laws and generating investor confidence that the company is woke towards working for the environment.

⁸ *Ibid.*

⁹ Commission Guidance Regarding Disclosure Related to Climate Change, SECURITIES ACT RELEASE NO. 9106, EXCHANGE ACT RELEASE NO. 61,469, 75 FED. REG. 6290 (Feb. 8, 2010).

¹⁰ *COP-26: India PM Narendra Modi Pledges Net-zero emissions by 2070*, BBC (November 2021) available at <https://www.bbc.com/news/world-asia-india-59125143>.

Research Questions

Having enlisted the effects of climate change on the working of corporate entities and the need to have stringent and effective environmental laws and a subsequent adherence to those laws by the companies, we now come to the research questions of this project. The aim of this project report is to address the following questions:

1. What is the regulatory framework for non-financial reporting in India?
2. What are the duties of a director with respect to Greenhouse Gas disclosure requirements under Companies Act 2013?
3. What is the position of GHG disclosure requirements in USA and UK?

GHG DISCLOSURE NORMS IN USA

The Securities and Exchange Commission (hereinafter referred to as SEC) is the principal regulatory body of USA which regulates the capital market and the corporate sector. It is mandated with protecting the investors from “*fraudulent and misleading corporate practices*” by imposing the duty on publicly listed companies to make certain disclosures in periodical reports. However, the SEC has prominently ignored any disclosure requirements of climate change concerning the environmental impacts and its associated risks.

However, a number of recent investigations and legal actions have brought forth that the investors are increasingly prone to make unwise investment decisions based on insufficiency of data and, in some cases, purposefully false representations made by corporations concerning their susceptibility to the adverse impacts of climate change. The primary motive that “*investors must be vested with right to use the accurate information which is essential to make investment and voting decisions for the orderly and smooth functioning of the financial markets*”¹¹ was a key consideration behind enacting the laws which mandated compulsory disclosures. In accordance with Section 13(a) of the Securities Exchange Act of 1934, “*provides for the reporting companies, which concerns those companies that have registered publicly to issue securities in the primary markets, must fulfill mandatory disclosure requirements by filing both annual, quarterly, and event-specific reports on Forms 10-K, 10-Q, and 8K respectively to SEC*”¹².

¹¹ *Understanding the SEC’s proposed climate risk disclosure rule*, MCKINSEY & CO. (June 3, 2022) available at <https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/understanding-the-secs-proposed-climate-risk-disclosure-rule>.

¹² § (a), Securities Exchange Act, 1934.

The Sarbanes–Oxley Act, 2002

The Sarbanes–Oxley Act, 2002, also known as predominantly the “Public Company Accounting Reform and Investor Protection Act” brought in many different changes to the disclosure regime in order to make the accountability standards of companies much higher than what it was before. It increased the liability of the companies in case they made incomplete or inaccurate disclosures.¹³ Despite not specifically addressing environmental disclosures, the Act significantly raises the bar for all business disclosures.

Coming to the current position, the rule proposed by SEC requires a company to make disclosures regarding:

1. The corporate governance executed by a company related to risks pertaining to climate change and its overall risk-management process.
2. The ways in which a climate-related risk may materially affect the company’s business and its financial position which may manifest over either the short- term, medium- term or long-term periods.
3. How the company’s strategy, business model, and outlook have been impacted by any recognized climate risks or are likely to be impacted by those risks; and
4. How a company's consolidated financial statements, as well as the financial estimates and assumptions used in the financial statements, are affected by climate-related occurrences (such as extreme weather conditions and other natural conditions).

In accordance with the proposed regulations, companies would also have to provide details regarding their direct (GHG) emissions i.e., Scope 1 and indirect emissions i.e., from purchased electricity or other energy sources i.e., Scope 2. Additionally, a company is also required to “*divulge GHG emissions from upstream and downstream activities in its value chain if it is substantial in nature or if the company has set a GHG emissions target or goal that includes Scope 3 emissions.*” Scope 1 or Scope 2 emissions are those produced directly by a corporation, whereas "Scope 3" emissions are those produced via its supply chain.

The proposals aim at providing investors with such material that is useful to them in assessing the risks undertaken by the company as well as the risks that the company is exposed to and also

¹³ *Supra* note 2, at 1325.

the steps taken by it to manage the risks, both transitional and climate-related. The proposed regulations would offer smaller reporting entities an exemption from the Scope 3 emissions disclosure requirement as well as a safe harbour for liability from that disclosure. The proposed disclosures are akin to those that many companies provide with based on widely used disclosure frameworks, like the “Greenhouse Gas Protocol and the Task Force on Climate-Related Financial Disclosures.”

In doing so, the SEC opted to adopt the Greenhouse Gas Protocol's (GHG Protocol) double-materiality approach to climate disclosures rather than the Sustainability Accounting Standards Board's (SASB) single-materiality approach.¹⁴ A single-materiality approach works on the principle that disclosures are made in such a way that only the investors can use them whereas under a double-materiality approach, the interests of both the investors and other stakeholders i.e. the public at large are protected by designing the disclosures for their collective use.

Companies in the majority of industries are not required to publish their either scope 1 and scope 2 emissions under “SASB's single-materiality approach” because, in SASB's opinion, the emissions are not significant enough to be material to investors. Companies in all industries are expected to disclose their scope 1 and scope 2 emissions under the double-materiality approach of the GHG Protocol. The SEC appears to have relied on the first prong of its authority to adopt regulations “*necessary or appropriate in the public interest or for the safety of investors*” in adopting the GHG Protocol's strategy.”¹⁵ In the United States, mandatory reporting to some version of the GHG Protocol increasingly seems inevitable.

GHG DISCLOSURE NORMS IN UK

The “Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013” imposes an obligation on firms which are incorporated in UK and are publicly listed UK to include a report on their GHG emissions as a portion of their annual financial reports. Prior to this obligation, the companies were mandated to account for their GHG emissions under the European Union Emissions Trading System (EU ETS). In fact, till 2013 there was no statutory obligation on public listed companies too, to report their “carbon footprint” in the annual corporate report.

¹⁴ Kauffmann, C., C. Tébar Less & D. Teichmann, *Corporate Greenhouse Gas Emission Reporting: A Stocktaking of Government Schemes*, OECD WORKING PAPERS ON INTERNATIONAL INVESTMENT, 2012/01, OECD (2012), available at <http://dx.doi.org/10.1787/5k97g3x674lq-en>.

¹⁵ *Supra* note 2, at 1345.

Thus, under such circumstances the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 brought in increased measures of transparency and accountability.

For businesses that have had significant long-term expansion or contraction, such a ratio measure will be more instructive regarding actual emission improvements. By using both sales and cost of goods sold (COGS) as the activity variable in the denominator, we are able to evaluate the impact of the disclosure mandate on businesses' carbon intensity. Under the Act, the annual reports of "listed companies" must include information about their direct and indirect GHG emissions. All fiscal years ending on or after September 30, 2013, are covered by the law.

The 2013 act, in particular, mandates that businesses reveal, in the Directors' Report, "their direct (Scope 1) and indirect (Scope 2) GHG emissions during the previous 12 months". Burning of fuel, working of factories and manufacturing units are the major constituents of direct emissions. On the other hand, emissions that come from the purchase of power, heat, steam, or cooling are referred to as indirect emissions.

The Act mandates that the annual report should contain specifications of the following GHG: "carbon dioxide (CO₂), sulfur hexafluoride (SF₆), methane (CH₄), hydrofluorocarbons (HFCs), nitrous oxide (N₂O) and perfluorocarbons (PFCs)." However, there is no requirement under law to provide the figures of individual emissions of each gas contained in the list.

Instead, they are required to disclose the total annual amount of GHG emissions in tCO₂eq, using the weights specified by the Intergovernmental Panel on Climate Change (hereinafter referred to as IPCC).¹⁶ Companies are required to provide a carbon intensity metric that links emissions to some activity indicator, such as sales or cost of products sold, in addition to the overall Scope 1 and Scope 2 tCO₂eq¹⁷. The statute mandates disclosures on GHG emissions, the diversity of directors, senior managers, and other employees, as well as more general social and human rights concerns. Additionally, UK businesses now have a responsibility to report on environmental issues and advancements that could have an impact on their operations in the future.

¹⁶ *Supra* note 15, at 211.

¹⁷ *UK mandatory GHG and environmental reporting*, CDSB (2021) available at <https://www.cdsb.net/what-we-do/reporting-policy/uk-mandatory-ghg-reporting-qa>.

INDIAN REGULATORY REGIME

‘Conservation of environment’ and ‘equalizing the ecosystem’ have an inevitable effect on the climate change. Global Warming has been increasing at an alarming rate which is not only an environmental issue but concerns the business ecosystem as well. Global industry leaders are incorporating and inculcating Environmental, Social, and Governance (*ESG*) while formulating their corporate and strategic policies. The Corporations are modifying their current organizational structure and strategies to accommodate and adopt measures that enable a sustainable economic recovery via transitioning to a low-carbon environment-friendly business strategy.¹⁸ On 12 December 2015, 196 nations at COP 21, signed the Paris Accord, a legally binding international treaty on climate change in Paris. The Paris Accord on Climate Change aims to limit global warming by achieving a long-term temperature goal below 2 degrees Celsius, compared to pre-industrial levels.¹⁹ This has to be achieved by controlling climate change by drastically reducing ‘Carbon performance and other Greenhouse gas (GHG) emissions globally’²⁰.

To execute and implement the same, corporations across the world need to contribute by undertaking actions to reduce carbon emissions and modifying and incorporating business models, corporate strategies and risk management accordingly. It is pertinent to note that the various stakeholders are inclined towards being informed about the working and functions of the corporations to achieve these changes related to global warming and the firm’s preparations to combat and mitigate it. In May 2011, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises were updated, which reflected “*the global objective for increasing stakeholder’s demand with respect to corporate transparency by encouraging companies to disclose environmental related information with high quality standards, particularly in the case of GHG emissions, as the scope AND importance of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions.*”²¹ The stakeholders are now prone to associate or disassociate with the corporate entities depending on their plans for sustainable growth and development, emphasising on their carbon performance.

¹⁸ Sarthak Bhardwaj et al, *Do Firms Undertaking ‘Green Initiatives’ Create Share Holder Value?* 4 INTERNATIONAL RESEARCH JOURNAL OF MODERNIZATION IN ENGINEERING TECHNOLOGY AND SCIENCE 6, 15 (2022).

¹⁹ *What is Paris Agreement?* UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> (last visited Sept. 28, 2022).

²⁰ *Id.*, at 19.

²¹ Kauffmann ET AL, *Corporate Greenhouse Gas Emission Reporting: A Stocktaking of Government Schemes*, OECD WORKING PAPERS ON INTERNATIONAL INVESTMENT, 1, 12 (2012).

The disclosures pertaining to the greenhouse gas emissions and carbon performance will boost the firm's corporate value, gain legitimacy along with knowledge and access to potential threats and opportunities with respect to impacts related physical climatic change as well as dynamic market trends and changing consumer preferences. It will also promote stakeholders trust and confidence by reflecting their commitment towards tackling carbon-related future risks. The emergence and increased demand for climate change information from government have shaped into various mandatory and voluntary 'Non-financial Reporting Framework' and other environmental related requirements which have initiated the disclosure drive among the corporate entities and other authorities to measure and report their Greenhouse Gas (GHG) emissions, reporting standards introduced to provide a structured multitude of perspectives, thematic interests and information requirements to achieve sustainability.²²

Ministry of Corporate Affairs (MCA)

The first initiative was taken by the MCA in 2009, who issued the "*Voluntary Guidelines on Corporate Social Responsibility*," in order to act as guiding standards to conglomerates and other corporate entities towards '*responsible business conduct and a sustainable corporate future*' by integrating sustainability into business practices and decision-making processes in the long-term. Additional guidelines were issued in 2011 by MCA, known as "*National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business*" (NVGs), emphasising the significance of corporate entities' environmental, social, and economic responsibilities, formulated a set of nine principles that enables a corporate entity to emphasis and inculcate responsible business conduct in their corporate values and decision-making processes.²³ These guidelines were further updated and revised in order to align with Sustainable Development Goals (SDGs) by 2030 and the 'Respect' pillar of the UNGP in 2019 and were known as "*National Guidelines on Responsible Business Conduct (NGRBC)*."²⁴ These principles are voluntary in nature and prescribe the requisite 'business reporting format' containing the disclosures requirements attached with each of the nine principles. These guidelines act as an internal instrument for companies to assess their progress, to grow in an inclusive and sustainable manner

²² B. Charumathi & Habeebu Rahman, *An Empirical Study On Corporate Greenhouse Gas Emissions Disclosure In India*, INFORMATION TECHNOLOGY AND MANAGEMENT 21, 25 (2017).

²³ *National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business*, MINISTRY OF CORPORATE AFFAIRS, (2011), https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf.

²⁴ *National Guidelines on Responsible Business Conduct*, MINISTRY OF CORPORATE AFFAIRS, (2019), https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf

and address the concerns of stakeholders.²⁵

Securities Exchange Board of India (SEBI)

SEBI, is the market regulator or the watchdog for securities and capital market in India had mandated the top 100 listed entities in 2012, which rose to 500 listed companies in 2017 by market capitalisation to submit Business Responsibility Reports (BRRs) from environmental, social and governance (ESG) regulation regime in line with Regulation 34 (2) (f) of SEBI (Listing Obligations and Disclosure Requirements) 2015.²⁶ An important circular regarding the regulation of Green debt securities and enhancing investor's confidence was issued by SEBI in 2017, named as "Disclosure Requirements for Issuance and Listing of Green Debt Securities" which is supplementary and compliments the SEBI (Issue and Listing of Debt Securities) Regulation, 2008, which envisages a list of disclosure norms and requirements that "an issuer of green debt securities must make in its offer before and after the commencement of a project financed via green debt raising instruments."²⁷ These additional disclosure frameworks were introduced in order to attract finances reserved for "ESG-compliance approved projects, such as renewable and sustainable energy projects, clean and hygienic transportation, anthropogenic climate change adaption, energy efficient, sustainable and resilient waste as well as water management, and biodiversity conservation, etc."²⁸

MCA subsequently set up a Committee (BRR Committee) on Business Responsibility Reporting in May 2020, provided pertinent recommendations as follows- "(i) reporting requirement can be extended to unlisted companies, (ii) smaller unlisted companies may be required to adopt lite version voluntary, and (iii) a five-year time duration for the successful implementation of the reporting norms to be provided to all companies across all sectors."²⁹

In May, 2021 SEBI amended Regulation 34(2)(f) of the LODR Regulations to introduce the BRSR reporting framework in order to further strengthen the ESG disclosure norm, which replaced the existing Business Responsibility Report (BRR).³⁰ The BRSR is a relatively

²⁵ CSR: History, NATIONAL CSR PORTAL, <https://www.csr.gov.in/content/csr/global/master/home/aboutcsr/history.html> (last visited Sept. 29, 2022).

²⁶ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, SECURITIES EXCHANGE BOARD OF INDIA, No. SEBI/LAD-NRO/GN/2015-16/013 (as amended July 25, 2022).

²⁷ Disclosure Requirements for Issuance and Listing of Green Debt Securities, SECURITIES EXCHANGE BOARD OF INDIA, CIR/IMD/DF/51/2017, (2017).

²⁸ *Id.*, at 30.

²⁹ Ministry of Corporate Affairs, *Report of the Committee on Business Responsibility Reporting*, (May 08, 2020).

³⁰ SECURITIES EXCHANGE BOARD OF INDIA, SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 11, 2021).

comprehensive disclosure framework, designed to seek mandatory disclosures from listed entities aligned with nine principles of NGBRC, wherein the top 1,000 listed companies by market capitalization, have to make annual disclosure about ESG-related information starting from the financial year 2022-23.³¹ Other listed companies have to voluntarily disclose the same from financial year 2022-23, including those that have listed specified securities on the Small and Medium Enterprises (SME) exchange.³² The reporting under the nine principles is divided into ‘essential indicators (mandatory compliance) and leadership indicators (voluntary compliance)’. The BRSR is aimed towards achieving quantitative and standardized disclosures on ESG parameters in order to enhance ESG complaint business practices in India in line with international sustainability reporting standards.³³ The BRSR enables the corporate entities to engage with their respective stakeholders more prominently and not only focusing on the wealth maximisation aspect but also towards social and environmental impacts.³⁴

Companies Act, 2013

The Companies Act, 2013 introduced ESG disclosure requirements for corporate entities under Section 134 (3) (m) read with Rule 8(3)(A) of the Companies (Accounts) Rules, 2014: “*mandates companies to include a report by their Board of Directors on the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; along with financial statements.*”³⁵ The Companies and other corporate entities have to furnish and disclose relevant information as mandated under Section 134 (3) (o), related to “corporate social responsibility and other matters related to the same.”³⁶

The Companies Act, 2013 has undergone an evolution wherein ‘*the stakeholder model of corporate governance has been codified and made it mandatory for the companies to think beyond their shareholders*’ by addressing the concerns of the stakeholders.³⁷ Section 166 (2) of the Act, casts “*a codified and fiduciary duty on the directors and states that: a director is under*

³¹Sebi comes out with disclosure requirements under Business Responsibility and Sustainability Report, THE ECONOMIC TIMES (May 11, 2021), <https://economictimes.indiatimes.com/markets/stocks/news/sebi-comes-out-with-disclosure-requirements-under-business-responsibility-and-sustainability-report/articleshow/82533681.cms?from=mdr> (last visited September 27, 2022).

³²*Id.*, at 34.

³³ Mark Uhrynyuk et al., *India Imposes New ESG Reporting Requirements on Top 1000 Listed Companies*, MAYER BROWN (June 8, 2021), <https://www.eyonesg.com/2021/06/india-imposes-new-esg-reporting-requirements-on-top-1000-listed-companies/> (last visited September 30, 2022).

³⁴Ankush Patel, *India ESG regulation a new challenge for companies*, THE TIMES OF INDIA (March 25, 2022), <https://timesofindia.indiatimes.com/blogs/voices/india-esg-regulation-a-new-challenge-for-companies/>.

³⁵ The Companies Act, 2013, § 134 (3) (m) No. 18, ACTS OF PARLIAMENT, 2013 (India).

³⁶ *Ibid.*, § 134 (3) (o).

³⁷*Id.*, § 166.

statutory obligation to act in good faith to promote objectives of the company and act in the best interests of the company, its employees, the shareholders, the community at large and for the protection of environment."³⁸ The Supreme Court in the case of *M.K. Ranjitsinh v. Union of India*³⁹, pertaining to the duty casted on directors held that: "*the fiduciary duty stipulated under section 166 (2) of the Companies Act, 2013 is not to be limited or restricted to the company and their respective shareholders, but shall also be covering the external environment and community aspects.*"⁴⁰

CONCLUSION

The severe and perceptible anthropogenic climate change is imposing a significant threat to environment as well business ecosystem and has depleted the well-being and health of our planet earth. At various international occasions the need for protection of the environment has been raised at both international and national levels which have advocated that the corporations must address the environmental issues and climate change concerns. Significantly, the Paris Accord, 2015 and the COP26 meet held at Glasgow, 2021 have tremendously influenced the global initiative to reduce the Greenhouse gas (GHG) emissions intensity which can be a stepping stone in mitigating the risks associated with the climate change.

The corporation across the globe are now concerned about the unpredictability of environmental issues and future risks associated with the same i.e., extreme weather events, disrupted operations, and environmental regulations. This is particularly due the stakeholder activism, which are mobilizing towards a sustainable future and environment-friendly society. This has strongly influenced the decision-making processes and strategic policy formulation of the corporate entities, who are now progressing towards discharging their environmental and social duties, as part of their corporate social responsibility and corporate value generation objectives.

The capital market regulators across the world are mobilizing towards stringent and progressive disclosure norms and regulatory regime with respect to corporate greenhouse emissions either by emancipating or constraining corporate entities environmental behaviour. This is due to the growing number of stakeholders demanding more information from corporations about their

³⁸ *Id.*, § 166 (2).

³⁹ *M.K. Ranjitsinh v. Union of India*, 2021 SCC OnLine SC 326.

⁴⁰ *Id.*, at 42.

vulnerabilities to climate change and their mitigation strategies to tackle the same. One significant move has been made by SEC in 2022 has mandated the disclosure requirements of the GHG emissions from US publicly listed companies wherein earlier they had disclosure norms but environment and climate change related concerns were nowhere required to be disclosed under the Sarbanes-Oxley Act, 2002. Similarly, The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, UK has mandated disclosures on part of the companies regarding their carbon intensity variable inclusive of GHG emissions. Indian regulatory regime is gradually moving towards enhancing regulations surrounding ESG. This has been materialized in the form of SEBI's move of amending the Regulation 34 (2) (f) of the SEBI (LODR) Regulations, 2015 and replacing the BRR framework with the BRSR framework, which is a comprehensive sustainability reporting framework. There are certain points which need to be enhanced or modified: a) The reporting mandate is only applicable to top 1,000 listed companies by market capitalization, while other listed companies have to comply the disclosure norms on voluntary basis, while the unlisted companies requiring to adhere to these norms are not yet introduced by MCA; b) SEBI need to introduce stringent-penalty provisions in case the companies are found delinquent of not complying with the GHG disclosure norms; c) The framework provides minimal and generic disclosure norms whose compatibility and veracity need to be checked by conducting an impact study of the 1,000 listed companies making disclosures by the government; d) sector-specific disclosure mandates will ensure adequate and proper compliance with the disclosure norms; e) SEBI may examine and scrutinize the adoption of similar auditing requirements (external assurance and independent auditors) as in the case of financial reporting by the corporate entities.

The introduction of BRSR framework is indicative of fast-forward and adaptable ESG regime towards the path of bringing more transparency and responsible business with participation and more engaging stakeholder at the central focus. The Companies need to be vigilant and adaptable while adopting practices to disclose relevant information in order to make themselves aware of the transitional and physical risks along with the ability and capacity to avoid potential litigation and reputational risks.