



ESG REGIME IN INDIA

India's Net zero pledge at the COP 26¹ has been a monumental step in the struggle against climate change. The Hon'ble Prime Minister of India announced that India would meet the target of Net Zero² Carbon Emissions by the year 2070. Contemplating over India's commitment in the light of the fact that India is the third largest emitter of carbon in the World³, naturally 'HOW' is the word that is first registered. The Government of India has devised an action plan⁴ to combat the carbon emissions which is inclusive of many schemes and programs, the notable one being the National Action Plan on Climate Change (NAPCC) and State Action Plan on Climate Change (SAPCC) by the State governments.

In line with achieving the goal of mitigating the climate change, the Securities and Exchange Board of India (SEBI) has made it mandatory for the top 1000 listed companies (by market capitalization) to file Business Responsibility and Sustainability Reporting (BRSR)⁵. The same has been done with the observation that today in light of the challenging climate change the world is witnessing, a company's performance on sustainability front is equally crucial as on the operational and financial front. MCA has also in the 'Report of the Committee on Business Responsibility Reporting'⁶ prescribed for unlisted companies and listed companies other than the top 1000 (by market capitalization) voluntary ESG disclosures in the format provided as BRSR.

¹ 2021 United Nations climate change conference

² Net zero- when there is a balance between the amount of greenhouse gas produced and the amount removed from the atmosphere and no addition is actually made.

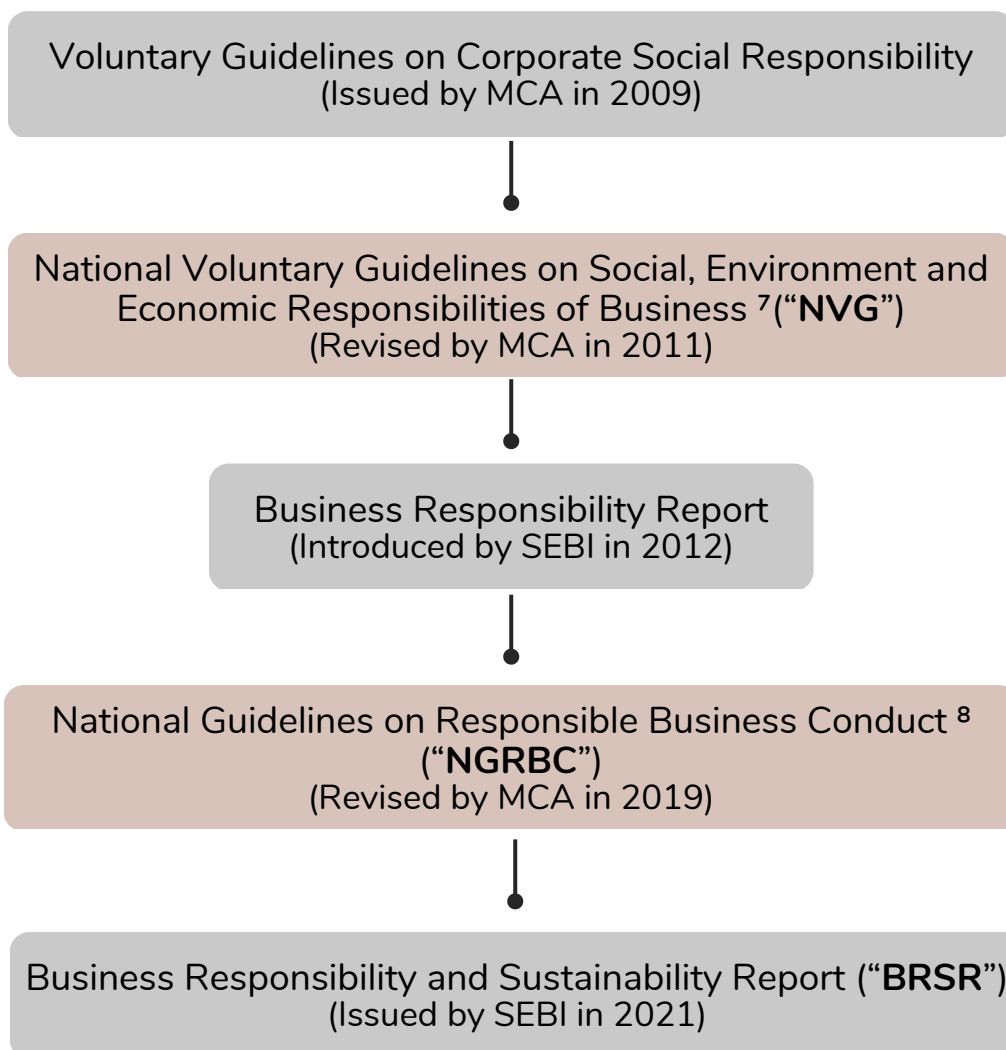
³ <https://www.carbonbrief.org/the-carbon-brief-profile-india/>

⁴ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1807648>

⁵ https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

⁶ https://www.mca.gov.in/Ministry/pdf/BRR_11082020.pdf

Prior to this mandate also guidelines have been issued for the companies; the timeline is shared as follows-



The Indian Banks Association has devised National Voluntary Guidelines for Responsible Finance⁹ which deals with E&S Governance and responsible financing.

⁷ https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf

⁸ https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf

⁹ https://www.iba.org.in/iba_data/attachdocs/jul-2018/1532502771528.pdf

Moreover, RBI has also set up a Sustainable Finance Group¹⁰ (SFG) in 2021 to bring up a regulatory framework and strategies governing banks and other entities regulated by RBI to address the issue of climate change.

The legal developments in light of the Environment and Social Governance can safely lead to the conclusion that uniform policies for adherence by all the Companies will soon be formulated. The same is also evident as India has pledged to be a Net Zero emitter by 2070 and the Government's policies and regulations will be directed towards achieving this objective.

LEGISLATIVE REGIME (ESG)

Despite the fact that ESG is becoming more and more significant in the corporate and commercial environment, there is sadly no specific piece of legislation defining ESG compliance. ESG disclosure has now been made a mandate for top 1000 listed companies by way of a modification to Regulation 34(2)(f) of the Listing Regulations. The Business Responsibility and Sustainability Reporting ("BRSR"), arising from the MCA report on Business Responsibility Reporting, has made its way into the regulatory provisions. Additionally, SEBI introduced the BRSR format and the guidance note in a circular¹¹ to help the companies understand the disclosures' scope.

The Companies Act of 2013 (the Companies Act), and the Listing Obligations and Disclosure Regulations of the Securities and Exchange Board of India, the Factories Act of 1948, the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Environment Protection Act of 1986, the Hazardous Waste (Management, Handling and Transboundary Movement) Rules of 2016, are among the laws that establish the regulatory framework for ESG.

¹⁰ <https://m.rbi.org.in/scripts/PublicationsView.aspx?id=20941>

¹¹ https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

THE COMPANIES ACT, 2003

The Companies Act¹²'s Section 134(3)(m) requires that the board's report include information on energy conservation, including any actions taken or their impact, actions taken to use alternative sources of energy, capital investments in energy conservation equipment, efforts toward technology absorption, etc.

Companies having a certain net worth, turnover, or net profit are required by Section 135 of the Companies Act and the Companies (Corporate Social Responsibility Policy) Rules, 2014, to form a Corporate Social Responsibility (CSR) committee to supervise the CSR policy and activities. Every year, eligible businesses must invest at least 2% of the average net income from the previous three fiscal years in CSR.

Section 166 of the Companies Act mandates that a company's directors act in the best interests of the firm, its shareholders, its employees, the community, and the environment in order to advance the company's objectives for the benefit of all of its members.

Environment Laws

The Environment (Protection) Act of 1986¹³ includes regulations for managing electronic waste, solid waste, biomedical waste, hazardous waste, ozone depleting substances, waste from construction and demolition, hazardous chemicals, plastic waste, batteries, and regulations for determining how a new industry will affect the environment. The Water (Prevention and Control of Pollution) Act of 1974¹⁴ and the Air (Prevention and Control of Pollution) Act of 1981¹⁵ put duties on businesses in the areas of water and air pollution prevention, control, and abatement.

¹² <https://www.indiacode.nic.in/handle/123456789/2114>

¹³ <https://www.indiacode.nic.in/handle/123456789/1876>

¹⁴ <https://www.indiacode.nic.in/handle/123456789/1612>

¹⁵ <https://www.indiacode.nic.in/handle/123456789/1389>

The Biological Diversity Act of 2002, the Forest (Conservation) Act of 1980, and the Wildlife (Protection) Act of 1972 ensure that businesses do not impede the natural ecosystems in their area of operations.

LABOUR LAWS

The Code on Wages, 2019, The Occupational Safety, Health and Working Conditions Code, 2020, The Code on Social Security, 2020 and The Industrial Relations Code, 2020 are the codes which are set to replace the labour laws in India and would provide social security, minimum wages and other rights of the workers

BUSINESS RESPONSIBILITY AND SUSTAINABILITY REPORT (BRSR)

SEBI amended some provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and one of the changes is to the elimination of the requirement for listed firms to submit BRR after FY2021-22. According to the announcement, businesses must submit a new report on ESG factors called the Business Responsibility and Sustainability Report (BRSR) in the manner described below.

Mandatory starting in the fiscal year (2022–2023): For the top 1,000 publicly traded corporations by market value

Elective for FY2021–2022: For the top 1,000 publicly traded corporations by market value

Free for other businesses: Firms who have listed their specified securities on the Small and Medium Enterprises (SME) exchange and listed companies (other than the top 1,000) may voluntarily submit BRSR in place of BRR.



Regulations for ESG are being developed progressively in India. SEBI has joined the community of nations and international organizations that have released thorough sustainability reporting systems with the adoption of the BRSR framework. The experience with BRR only suggests that a greater variety of companies would eventually be covered under the BRSR framework, even though the reporting mandate is currently limited to the top 1,000 listed companies by market capitalization.