
GREEN BANKING AND SUSTAINABLE FINANCE: LEGAL AND REGULATORY FRAMEWORK IN INDIA

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ABSTRACT

The financial sector of India is at a crossroads in which the demands of environmental sustainability and the design of the banking regulation start overlapping. In this paper, the author will discuss the legal requirements that Indian banks should implement with the expectation to embrace environmental-friendly practices in the fast-changing paradigm of green banking and sustainable finance. Due to the particularity of the study, the primary legal materials considered in the paper are the Banking Regulation Act, 1949, the regulations of the Reserve Bank of India (RBI), the guidelines of the Securities and Exchange Board of India (SEBI) on Business Responsibility and Sustainability Reporting (BRSR), the National Action Plan on Climate Change, and specific environmental legislation. The research also utilises international principles such as the UNEP Finance Initiative Principles of Responsible Banking, the Equator Principles, the Paris Agreement and the guidelines of the Basel Committee in regard to risks associated with climate and financial risks.

The paper concludes that although the green banking regulatory architecture in India has improved significantly since 2019 including the Discussion Paper on Climate Risk provided by the RBI, the Green Deposits Framework, and, most importantly, mandatory BRSR, the framework is still defined by the overall lack of enforceable legal requirements regarding the substantive operative lending, investment, and risk management practices of banks. Goodwill compliance with international principles and requirements based on disclosure, although constructive, are not enough to lead to the systematic change in the behaviour of the banking system that the requirements of the Paris Agreement that India has committed to will need.

The paper using the case studies of the green bond programme of SBI, green banking of the YES Bank, and the climate finance of NABARD has identified the potential and restrictions of the institution-based green banking when there is no consistent statutory framework in the country. A comparative evaluation of the EU Sustainable Finance Taxonomy and the UK Green Finance Strategy provides normative standards of analysis of the

regulatory course India was following. The paper ends by making specific policy proposals on legislative and regulatory change, such as a Green Finance Taxonomy, systemically important banks to disclose climate risks, and a specific inter-regulatory coordination framework.

Keywords: Green Banking; Sustainable Finance; Environmental, Social and Governance (ESG) Disclosure; Climate Risk; RBI Regulatory Framework.

I. Introduction

A. Sustainable Finance and Environmental Responsibility in the Banking Concept

Through the global financial system, there is the pressing concern of climate change and environmental degradation that is confronting the global financial system with the need to fundamentally review the operations of banks and financial institutions with ecological limits. The concept of sustainable finance, the inclusive experience of integrating environmental, social, and governance (ESG) factors in ensuring that financial decisions are made, has ceased to be a fringe ethics issue, and evolved into the core of regulatory and legislative requirements in most economies. The UNEP Finance Initiative views sustainable finance as a way to provide financial capital in a manner that it takes into account environmental, social, and governance standards in the sense that they support economic activities and projects that are sustainable.¹

This change is taking root in India although not uniformly because of an interplay of international engagements in the Paris Agreement, domestic regulation development and increasingly acoustic to the realization that climate-related financial risks represent systemic risks to economic stability. A similar concept is called green banking which involves the borrowing of a green financial policy and practices by banks, which are considered environmentally friendly, such as funding renewable energy projects, creating green financial product lines, incorporating the environmental risks as part of credit assessment, and actively reporting climate risks exposures. Since the banking sector of India is very much dominated by state-owned banks, the influence of the RBI and governmental policies on the development of environmentally responsible banking operations gains an unreasonable importance in relation to those jurisdictions where the government had no impact on the development of banking services and thus the innovative processes driven by the private sector.

¹UNEP Finance Initiative, *Principles for Responsible Banking* (2019), <https://www.unepfi.org/banking/bankingprinciples/>.

B. Research Objectives and Questions

The paper provides an enquiry into the legal impostures placed on the Indian banks in terms of the national and international systems on the adoption of environmental friendly practices. It questions whether the current regulatory framework – such as RBI guidelines, SEBI BRSR framework, National Action Plan on Climate Change (NAPCC) and sector-specific environmental legislation can or should evoke the required green banking conduct in good faith. There are three focal research questions that drive the questioning, which include: first, does Indian law place binding legal responsibility on banks to consider environmental issues in their businesses; second, is the Indian regulatory framework compliant with the international best practices in sustainable banking; and third, what should be done in terms of laws and regulations to create a sound green banking regime in India.

C. Scope and Methodology

The research methodology is the doctrinal legal research that examines primary legal resources such as laws, judicial rulings, regulating circulars and officials, complemented by academic literature and foreign frameworks. It is confined to the banking industry under the regulations of the RBI and the Banking Regulation Act 1949, incidentally referring to other areas of the sustainable finance architecture such as insurance. The data will be analyzed up to the first quarter of the year 2026.

II. Green Banking Conceptual Framework

A. Green Banking: Definition and Development

Green banking has not yet attained a universally agreed legal definition yet, however, it has been defined in the literature as an academic, as well as policy literature, as the practice through which commercial banks integrate environmental goals in their lending, investment, and operating strategies. It came into being in the late 1990s and early 2000s as a reaction to the growing body of evidence that financial institutions were facilitating the harm to the environment indirectly by financing projects blindly. The influential seminal work of Schmidheiny and Zorraquin on financing change provided the intellectual background of applying change towards changing the existing corporate finance, claiming that capital markets

should indicate the long-term cost of ecological degradation.²

With modern day use, green banking includes various separate although interlinked functions: green lending to low carbon footprint or environmental co-benefit projects; green bonds and other sustainable debt instruments; environmental risk assessment in credit appraisals; internal sustainability, lowering the carbon footprint of bank itself; and ESG-constrained investment management. It is extended by the difference between real banking that is deep green, i.e. where the flow of the financial processes is truly transformed, on the basis of ecological sustainability, and light green banking, is where the superficial environmental branding is combined with no meaningful change in behaviour.

B. Financial Institutions Participation in Environmental Governance

The role of financial institutions, through its capital allocation, places it in a very dominant position in the environment governance system. The Freshfields Bruckhaus Deringer report by UNEP FI concluded that it was not beyond the legal capacities of institutional investors and banks to take into account ESG factors as a component to their fiduciary obligations because profit maximisation is the only duty that they should have in regard to shareholders.³

This reinterpretation of fiduciary duty has strong consequences in the way banks assess loan applications, form investment portfolios and in the way it does climate-related risks disclosures.

In India, global imperatives provided by the international agreement with the Paris Treaty, the national needs provided by the NAPCC and the increasing enforcement of regulatory focus by RBI and SEBI on ESG issues have contributed to the formation of the concept of green banking. Although Indian banks have made comparatively lower progress than their counterparts in European countries regarding establishing green finance in their institutions, there is an emergent regulatory framework that is an indication of a greater seriousness of intent. The paper looks at the issue of whether that architecture enforces legally

²S. Schmidheiny & F. Zorraquin, *Financing Change: The Financial Community, Eco-Efficiency, and Sustainable Development* (MIT Press 1996).

³Freshfields Bruckhaus Deringer, *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment* (UNEP FI 2005).

binding responsibilities that could be enough to bring forth the level of transformation needed by the environmental challenge.

III. Global Standards and International Regulatory Framework

A. UNEP Finance Initiative and Principles of Responsible Banking

One of the first multilateral structures to directly involve financial institutions with regard to the issue of environmental responsibility was the UNEP Finance Initiative that was instituted in 1992 after the Rio Earth Summit. Its Principles of Responsible Banking (PRB), which has been released in 2019 and is now signed by more than 300 signatory banks all over the world, demand financial institutions to align their business strategies with Sustainable Development Goals and Paris Agreement, assess and disclose their environmental and social impact, and provide targets of ongoing improvement.⁴

The PRB function voluntarily, but are also an emerging soft law system where the expectation of enforcement of PRB is harder, and some jurisdictions have adopted commitments of PRB to supervisory assessment frameworks.

B. The Equator Principles

Perhaps the most operationally important project finance-related standard in the field of environmental governance privately is the Equator Principles, which were initially adopted in 2003 and is currently in its fourth version (EP4, 2020).⁵ The Principles are applicable where a signatory bank has an interest in project finance transactions of over USD 10 million and the bank has to evaluate and address the environmental and social risks in project development, with the IFC Performance Standards as the substantive guideline.⁶

Global project finance transactions are mainly conducted through the Equator Principles Financial Institutions (EPFIs), thereby providing the framework with astonishing systemic coverage of about 90 percent. The signatories are also high profile government-owned

⁴UNEP Finance Initiative, *Principles for Responsible Banking* (2019), <https://www.unepfi.org/banking/bankingprinciples/>.

⁵Equator Principles Association, *The Equator Principles* (4th ed. 2020), <https://equator-principles.com>.

⁶International Finance Corporation, *IFC Performance Standards on Environmental and Social Sustainability* (IFC 2012).

banks in India such as the State Bank and Canara Bank, which have formed a nexus between global best practice and local lending practices.

C. The Obligations of Climate Finance and the Paris Agreement

The Paris Accord of 2015 is not directly applicable to financial institutions, but this agreement has seriously redefined the legal and regulatory landscape in which they file their business. Article 2.1(c) demands the consistent financial flows along with the pathway to the goal of low greenhouse gas emissions and climate-resilient development, which implies that financing resources must be assigned to financial institutions differently.⁷ Having signed the document, India is obliged with Nationally Determined Contributions (NDCs). The targets outlined in the agreement comprise substantial amounts of renewable energy and a reduction in emissions intensity, which have posed a political and a legal challenge to financial regulators to create incentives in the banking sector that reflect the countrywide climate commitments. The G20 Sustainable Finance Roadmap (2021) further defines a direction on how a financial system architecture can be aligned with climate objectives, sets the expectations of emerging convergence in market regulations.⁸

E. Basel Committee and ESG Risk Frameworks

Regulation of climate risk on financial risk by Basel Committee on Banking Supervision has also become an important aspect of the supervisory Basel Committee. In its 2021 analytical report on climate-related financial risks, two main risk channels were pointed out, including physical risk of climatic events like floods and droughts, and transition risk caused by policy, technological, and consumer behaviour changes in relation to the low-carbon transition.⁹

The Principles of the Effective Management and Supervision of Climate-Related Financial Risks (2022) of the Basel Committee offer a broad format of incorporating climate risk into the governance practices, risk management practices, scenario analysis practices and disclosure practices of banks – a major normative development, which possesses a quasi-

⁷Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104, art. 2.1(c).

⁸G20 Sustainable Finance Working Group, *G20 Sustainable Finance Roadmap* (2021).

⁹Basel Committee on Banking Supervision, *Climate-Related Financial Risks: Measurement Methodologies* (BIS Apr. 2021).

mandatory de facto force on governments that adhere to Basel compliance.¹⁰

IV. Green Banking Legal and Regulatory Environment in India

A. Reserve Bank of India Role

The legal regulation of the environmentally responsible banking in India is scattered with dozens of regulations and policy statements and industry laws, which indicates the lack of a specific green banking act and facilitative and incremental method of regulation development that has only been characteristic of the process in India. This mandate of the RBI over the commercial banks is principally based on the Banking Regulation Act, 1949 which vests wide powers on the central bank to declare directions to the banking companies, in the interests of the public as well as the banking policy.¹¹

Section 35A of the Act grants the RBI authority to make directions to any banking company or categories of banking companies and this has traditionally been used to introduce actions in the name of prudence and can just as well be used to insert environmentally friendly behaviors. Nevertheless, the RBI has exercised a facilitative and not a prescriptive approach to green finance, with more of guiding the instruments, as opposed to any command.

This official involvement of RBI in sustainable finance had taken a new impetus after the year 2019. Its Statement on Developmental and Regulatory Policies (2021) recognised that climate change was a risk to financial stability, and committed to having a framework that deals with climate risk.¹² In the Report on Trend and Progress of Banking in India 2022-23, climate risk was first set as a topic of concern among supervisors and the efforts of scheduled commercial banks to start working in the domain of green finance were noted.¹³

B. RBI Principles of Sustainable Finance

In 2022, the RBI released a Discussion Paper on Climate Risk and Sustainable Finance, which although of a clearly advisory nature, signified that this regulator would begin slowly to

¹⁰Basel Committee on Banking Supervision, *Principles for the Effective Management and Supervision of Climate-Related Financial Risks* (BIS 2022).

¹¹Banking Regulation Act, No. 10, Acts of Parliament, 1949 (India), § 35A.

¹²Reserve Bank of India, *Statement on Developmental and Regulatory Policies* (Oct. 8, 2021).

¹³Reserve Bank of India, *Report on Trend and Progress of Banking in India 2022–23* (RBI 2023).

start integrating the climate risk into the supervisory regime.¹⁴

The Discussion Paper laid down some priorities including the embrace of the scenario analysis, the set up of the criteria of the climate risk disclosure, undertaking of the physical risk and transition risk into credit rating practices, and a trip through the green taxonomy of the Indian financial markets. It placed a lot of dependence on Basel Committee set up and the recommendations of TCFD, a sign of adherence to international standards of supervision.

In February 2023 a Framework for Acceptance of Green Deposits was issued by the RBI making India one of the first emerging market regulators to operationalise a standardised green deposit product.¹⁵ The Framework creates controlled organisations that accept green deposits to establish a board approved policy that gives an assurance of proceeds to be issued on environmentally sustainable projects in specified eligible categories, the allocation and impacts be independent of a third party and the release of an annual impact report. This Framework is by present the narrowest regulation requirement up until now though since it is strictly confined to deposits only and does not apply to lending and investment processes on a larger scale.

C. SEBI ESG Reporting Requirements

Under its Business Responsibility and Sustainability Reporting (BRSR) framework, SEBI has devised ESG disclosure regime of listed companies such as listed banking institution in 2021.¹⁶ BRSR also replaced the earlier Business Responsibility Report with an otherwise more comprehensive template of the ESG indicators that would be consistent with the global standards like Global Reporting Initiative and TCFD. Concerning the top 1000 companies on the market based on market capitalisation, BRSR compliance is now forcefully applied by FY 2022-23. Another guideline presented by SEBI shows BRSR Core where key ESG indicators reporting is assured by FY 2023-24, and, here, having independent confirmation of a set of predetermined quantitative ESG indicators, including greenhouse gas emissions, energy consumption, and water use should be mentioned.¹⁷ The government banks such as SBI and

¹⁴Reserve Bank of India, *Discussion Paper on Climate Risk and Sustainable Finance* (July 2022).

¹⁵Reserve Bank of India, *Framework for Acceptance of Green Deposits* (Apr. 11, 2023).

¹⁶Securities and Exchange Board of India, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021).

¹⁷Securities and Exchange Board of India, Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/145 (Oct. 12, 2023).

Bank of Baroda are listed businesses hence fall under the BRSR framework.

The regulatory framework of the green debt securities as suggested by the regulatory authority adopted by SEBI is in isolation captured in the Master Circular of 2023 which regulates the issuance of green bonds and other labelled debt instruments by listed companies.¹⁸ Disclosure is enclosed in circular demands of the use of proceeds, the selection criteria and reporting of impacts of the project which is as general as the ICMA Green Bond Principles.¹⁹ The framework is however ineffective because they are self-certified on competence of projects and are not subjected to verification by a qualified external reviewer.

D. National Action Plan on Climate Change

In response to the climate change, the Government of India has embraced the National Action Plan on Climate Change in the year 2008 that provides the overall national domestic policy on ensuring response to climate change.²⁰ Although there is no legal obligation on the financial institutions cited in the NAPCC, National Solar Mission and National Mission on Enhanced Energy Efficiency are some of the eight national missions that are meant to bring a policy framework during which the lending of the banks by the national sector is informed on activities that are environmentally friendly. The Ministry of Finance has periodically released a call to the public sector banks to prioritize their lending on the objectives of NAPCC as opposed to this being strictly an enforceable document.

F. Financial Institutions Environmental Policies

Environment Protection Act, 1986 and industry related legislation like Water (Prevention and Control of Pollution) Act, 1974²¹ directly does not control banks, but makes the project developers whose projects are bank financed accountable. The project finance processes have incorporated environmental due diligence which is known to indirectly lure the banks into the environmental compliance regime of large industrial and infrastructure projects.

The polluter pays principle of Indian Council for Enviro-Legal Action v. Union of India

¹⁸Securities and Exchange Board of India, *Master Circular on Green Debt Securities* (Feb. 6, 2023).

¹⁹International Capital Market Association, *Green Bond Principles* (2021).

²⁰Government of India, *National Action Plan on Climate Change* (Prime Minister's Council on Climate Change 2008).

²¹Environment Protection Act, No. 29, Acts of Parliament, 1986 (India); Water (Prevention and Control of Pollution) Act, No. 6, Acts of Parliament, 1974 (India).

(1996)²² has slowly shifted the burden to the commercials in the chain of causation of environmental degradation, which has introduced a latent litigation risk upon banks that have financed the environmental non-compliant projects without due diligence. However, a definitive decision on the question of Indian lender liability in a case over the environmental damages that project-money borrowers may cause has not yet materialized and forms a very huge legal grey area.

V. Banks in Promotion of Sustainable Finance

A. Green Bonds and Sustainable Debt Instruments

Indian banks are currently participating actively in the sustainable finance market by both issuing green financial instruments and by acting as instruments that channel money to projects that are environmentally favorable. Green bonds (which are the most visible instrument that Indian banks have accumulated interests on sustainable finance markets) are the tool that Indian banking has constructed to fulfill the requirement. A green bond is a fixed income instrument where proceeds are allocated to projects that serve the environment and this also aided by Green Bond Principles that are published by ICMA.²³

In 2017, the category of green bonds was coined by SEBI as a distinct sub-type of debt securities, which foreshadows the establishment of an Indian green bond market that has grown to large size, with India being among the ten largest issuers of green bonds measured by volumes of cumulative issues.²⁴

B. Disclosure of Climate Risk and TCFD Alignment

Climate risk disclosure is a relatively new field of bank accountability. The TCFD mandate, which is promoted by the Financial Stability Board, mandates disclosure in four thematic categories including governance, strategy, risk management, and metrics and targets.²⁵

Although still voluntary in India, supplementing the SEBI BRSR framework beyond

²²Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 (India).

²³International Capital Market Association, *Green Bond Principles* (2021).

²⁴Securities and Exchange Board of India, *Master Circular on Green Debt Securities* (Feb. 6, 2023).

²⁵Task Force on Climate-related Financial Disclosures, *Final Recommendations of the TCFD* (FSB 2017).

expected indicators are indicators of TCFD inspiration and the Discussion Paper on Climate Risk published by the RBI has also indicated that it would at least consider mandatory disclosure in the medium term.²⁶

The implementation of TCFD-compliant disclosure by Indian banks has been skewed with private sector based banks, e.g., HDFC Bank and Axis Bank showing greater voluntarism than state-owned based banks as key differences in institutional incentives between facing the market based private sector versus facing the state based government operated banks.²⁷

C. ESG Lending Frameworks and Sustainable Investment

Many Indian banks have been embracing ESG lending structures, especially in their sustainability-related loan structures where the interest rates hinge on the ESG performance of the borrower. ICICI Bank and Axis Bank have worked on elaborate ESG credit appraisal mechanisms that thereby screened environmental risks in the credit approval process, yet the methodological inconsistency and lack of a requirement-based standards put cross-institutional comparisons at a challenge.²⁸ Although BRSR framework of SEBI is oriented on disclosure of listed companies, secondary incentives of the capital market-facing banks when it comes to borrower ESG data have been established.

VI. Green Banking Initiatives in India: Case Studies

A. SBI Green Bonds

The green bond programme of SBI represents a convenient prism with the help of which the development of the green banking practice within the largest Indian state-owned institution can be analyzed. In 2018, the first ever green bond issued by SBI under a Green Bond Framework in agreement with the ICMA Green Bond Principles was USD 650 million, with the proceeds distributed to renewable energy development, energy efficiency, and clean transportation infrastructure development.²⁹

CICERO Shades of Green independently rated the issuance as a “Medium Green” shade

²⁶Reserve Bank of India, *Discussion Paper on Climate Risk and Sustainable Finance* (July 2022).

²⁷Axis Bank Ltd., *Environmental Social Governance Report 2022–23* (Axis Bank 2023).

²⁸ICICI Bank Ltd., *ESG Report 2022–23* (ICICI Bank 2023); Axis Bank Ltd., *Environmental Social Governance Report 2022–23* (Axis Bank 2023).

²⁹State Bank of India, *Green Bond Framework* (2018), <https://www.sbi.co.in>.

score, meaning that it has a high level of but incomplete conformity to the objectives of the Paris Agreement.³⁰

The further issues of green bonds issued by SBI reflected graduating improvements in impact reporting granularity, such as project-related energy generation metrics, and carbon dioxide saving metrics.³¹ Nevertheless, critics have recorded a persistence in the lack of solid project exclusion standards on fossil fuel-related projects and the overall share of SBI loan book on green activities is still small compared to its overall assets.

B. YES Bank Sustainable Finance Initiatives

YES Bank before its financial dilemma and later reconstruction by the RBI was believed to be setting a trend of sustainable finance in the Indian private sector. It has a Sustainable Finance Framework, which it adopted in 2015, which stated that it would lend USD 5 billion of sustainable infrastructure projects over a five-year horizon and launched an internal Environmental and Social Risk Management (ESRM) framework to assess project finance deals.³²

The implementation of the Equator Principles by YES Bank since 2015 provided the bank with a state of institutional discipline in its project finance operations, whereby an environmental and social impact assessment are applied to specific transactions and borrower adherence is adequately monitored.³³

Their experience of the bank both shows the potential and the weakness of voluntary ESG commitments without strong regulatory support: the break in of its wider governance arrangements eventually proved more powerful than its sustainability pledges, which prompt the need to have more structural regulatory requirements regardless of individual institutional voluntarism.

C. NABARD Green Agriculture Financing

NABARD holds a unique place in the green finance structure of India being the main channel through which multilateral climate finance enters Indian agricultural and rural

³⁰CICERO Shades of Green, *Second Opinion on SBI's Green Bond Framework* (CICERO 2018).

³¹State Bank of India, *Annual Report 2022–23* (SBI 2023).

³²YES Bank Ltd., *Sustainable Finance Framework* (2015).

³³Equator Principles Association, *The Equator Principles* (4th ed. 2020), <https://equator-principles.com>.

development. NABARD has been able to tap into international climate finance through its green climate fund accreditation achieved in 2018, that has been used in projects such as watershed management, solar irrigation and climate-resilient agriculture. The NABARD Annual Report 2022-23 records disbursements of above INR 5,000 crore to climate-related agricultural projects and proves that the institutional language of development finance is capable of deploying key green banking ideas at scale.³⁴

The experience of NABARD also highlights the possibility of bridging the disjuncture between formal sustainability promises and direct environmental performance, especially in the areas where the commercial banks run a greater perceived risk and cut shorter investment perspectives.

VII. Obstacles to the Implementation of Green Banking in India

A. Lack of Binding Legal Obligations

Despite the above development, green banking in India is faced with structural, regulatory, and institutional challenges. The most basic one is that there are no legal commitments that enforce banks to act in an environmentally responsible manner. However, unlike EU, where a well-developed mandatory structure has been established with the Sustainable Finance Disclosure Regulation and Taxonomy Regulation (SFDR), green banking in India is largely based on the voluntary frameworks, advisory guidelines, and soft law provisions. The green deposit model of the RBI and BRSR requirement of SEBI are crucial but incomplete moves as the former restricted itself to a specific type of product and the latter was, however, about disclosure, but not about the critical alteration of behaviour. The possibility of regulatory arbitrage and selective compliance is also high, in the absence of any statutory requirements that can be upheld by regulators with punitive and determinant effects.

B. Regulatory Fragmentation

Systemic problem two is regulatory fragmentation. Banking environmental responsibility is at the intersectional point of environmental responsibility pursued by regulatory requirements imposed by RBI, SEBI, the Ministry of Finance, the Ministry of Environment, Forest and Climate Change along with the environmental authorities of the

³⁴National Bank for Agriculture and Rural Development, *Annual Report 2022–23* (NABARD 2023).

respective states. Lack of sound regulatory framework or a body charged with the responsibility of green finance poses a jurisdictional challenge and collapse of coordination. According to Bhattacharya, the high number of regulators with conflicting yet simultaneous mandates in the sustainable finance sector is one of the main structural barriers to coherent green banking policy in India.³⁵

An example is where a huge industrial project loan provided by a bank can meet the prudential requirements of RBI and fund an activity that does not meet the conditions under environmental clearance, but there is no automated mechanism of inter-regulatory information exchange and enforcing activity.

C. Greenwashing Concerns

The process of greenwashing which implies exaggeration or distortion of the ecological nature of the financial products and operations is filled with threats to the integrity of the immature green finance market in India. This lack of a legal definition of green, which is established on an adopted taxonomy legally, provides a high degree of exercise to banks and other financial institutions that would then be able to define their offering and portfolio as green. The absence of a third-party validation conditions that should be fulfilled to present green lending products (which are not offered by the system of green deposits) makes the situation possible when the conditions in which greenwashing can develop successfully in the context of non-responsibility are established. BRSR Core of SEBI has offered an element of ensuring ESG disclosures independently though not at the constituent level of loan portfolio of forming claims on the environmental impacts.

D. Problems of Risk Entanglement and Data

The absence of sufficient and more recent data as well as inadequate development of methods are other aspects that make the problem of risk management more problematic. The process of physical and transition climate risk of bank portfolios can be done through geospatially disaggregated measures of the quantity of assets on exposure in a specific bank, the capability to undertake scenarios analysis and standardized sectoral indices of emissions intensity, which are at present non-systematic in India. This is the data gap that the RBI has

³⁵Bhattacharya, A., 'Green Banking: The Regulatory Paradigm in India', 14 *Indian J. Envtl. L.* 23 (2021).

identified in its Discussion Paper though, the process of creating the necessary data infrastructure has to be maintained by investing in it and coordinating the efforts of various agencies not yet adequately resourced. The principles of climate target-setting, which can be found in UNEP FI on banks, give a methodological background, but its application in the Indian context will have to involve the accommodation of the facts of the local data and industry.³⁶

VIII. Comparative Perspective

A. European Union Sustainable Finance Taxonomy

The Sustainable Finance Taxonomy made as Regulation (EU) 2020/852 by the European Union is the most ambitious attempt to come up with a legally binding classification of environmentally sustainable economic activity.³⁷

The Taxonomy has six environmental goals, such as climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, prevention and control of pollution, and protection and restoration of biodiversity and ecosystems, and offers a technical screening criterion to determine whether a certain activity substantially contributes to one or more environmental objective, but otherwise harming other objectives. According to the SFDR, financial institutions within EU are required to report the proportion of the portfolios that comply with the Taxonomy which creates a testable and legally binding norm to take credit in green finance.³⁸

Its bindingness and granularity is a significant advancement over other weaker international regimes but its establishment has been contentious as a political matter: natural gas and nuclear energy have been included controversially as transitional activities in the Complementary Delegated Act and its extraterritoriality is limited only to non-EU jurisdictions. Nevertheless, being a demonstration of the mandatory taxonomy, the EU can provide noteworthy examples of how to structure the compulsory taxonomy, particularly in the way it explains the needs of defining Do No Significant Harm and minimum social protection as pre-qualifications to become an eligible activity.

³⁶UNEP Finance Initiative, *Guidelines for Climate Target Setting for Banks* (2021).

³⁷Regulation (EU) 2020/852 of the European Parliament and of the Council on the Establishment of a Framework to Facilitate Sustainable Investment, 2020 O.J. (L 198) 13 [EU Taxonomy Regulation].

³⁸Regulation (EU) 2019/2088 on Sustainability-related Disclosures in the Financial Services Sector, 2019 O.J. (L 317) 1 [SFDR].

B. UK Green Finance Strategy

The Strategy of Green Finance released in the United Kingdom in 2019, which was updated in 2023, indicates a much different but complementary strategy.³⁹ Compulsory TCFD compliant disclosure has also been prioritized in the UK: the UK is the first G20 country to make TCFD compulsory disclosure by large companies and financial institutions; and has established a UK Green Taxonomy Committee to develop home taxonomy standards. The UK Climate Change Act, 2008 has provided climate governance with a statutory foundation in the UK but does not regulate the actions of financial entities as such, but it does provide a framework by which financial regulators can operate in the UK as it has a very specific statutory objective of ensuring the transition into a net zero.⁴⁰

Among other areas where the Bank of England has been engaging in is to instill climate risk into its supervisory practice by its Climate Biennial Exploratory Scenarios (CBES) of major banks and insurers, which the RBI can easily follow, although with some adjustments.⁴¹

C. Lessons for India

A comparison of the two countries in the case of India suggests that there are a number of avenues that the government can assume concerning the specification of its regulations. To start with, its early and initial implementation in form of broad exclusion parameters and qualified categories would provide regulation good where voluntary structures cannot achieve. Second, systemically important banks would also be expected to report the climate risks in the TCFD format and slowly also which would bring incentive to the institutions to build capacity and increase market transparency. Thirdly, to address the issue of fragmentation, the creation of a particular regulatory organization is possible, e.g. the Green Financial Innovation in the UK or the Platform on Sustainable Finance in the EU which would create a more complex approach to the tools and methods of accessing them in relation to promoting the optimal outcomes in finance and economy-related activities. The Expert Committee on Sustainable Finance Taxonomy set up by the Ministry of Finance has begun work on developing it, but it

³⁹HM Government, *Green Finance Strategy: Mobilising Green Investment* (HM Treasury 2019); HM Treasury, *Mobilising Green Investment: 2023 Green Finance Strategy* (HM Government 2023).

⁴⁰Climate Change Act 2008, c. 27 (UK).

⁴¹Bank of England, *Climate Biennial Exploratory Scenario: Final Results* (BoE 2022).

needs a legislative support to be sustainable, as well as enforceable.⁴²

IX. Policy Recommendations and Suggestions

A. Improving RBI Regulatory Requirements

Taking into consideration the analysis of the doctrines, the comparison and evaluation, the current paper prepares the following recommendations. First of all, the RBI should apply its power under Section 35A of the Banking Regulation Act to provide binding principles where in case a scheduled commercial bank exceeds a fixed limit on asset bases, it must include the assessment of climate risk in its credit judgment in lending process in large amounts. This should be backed by a projected supervision that develops a minimum standard of climate risk governance like the board level accountability of climate risk administration and channels of sustainability officers that has an authority to make decisions. The RBI Sustainable Finance Group that is constituted as a part of the Department of Regulation should be granted supervisory examination to check the conformance of the banks to the standards.

B. Moving Towards ESG Reporting and Green Financial Taxonomy

Second, the Ministry of Finance and SEBI, technical consultations of the Ministry of Environment, Forest and Climate Change and the advising panels of experts should engage in a consultative process and develop a statutory Green Finance Taxonomy in India. The taxonomy would need to initially focus on the classification of the worthy of a green classes in the capital market use – modified to an indigenous context of development – and expand gradually to prudential uses. Such legislative vehicles with the help of which the taxonomy can be grounded on statutory authority would be modifying the Securities Contracts (Regulation) Act⁴³ or the issue of a separate instrument on the grounds of the SEBI Act.

Third, climate risk disclosure by TCFD should be noted to all listed commercial banks and systemically-important non-banking financial companies that should be obligated to advance over stages that are low-cost and ultimately financed emissions reporting. The BRSR Core guaranteed indicators should be enlarged to accommodate sector-specific bank portfolio financed emissions to allow meaningful cross-institutional comparison. Adequacy in the

⁴²Ministry of Finance, *Report of the Expert Committee on Sustainable Finance Taxonomy* (2023).

⁴³Securities Contracts (Regulation) Act, No. 42, Acts of Parliament, 1956 (India).

disclosures to the international disclosure models would be assisted by adherence to the international standards, that is, the International Sustainability Standards Board (ISSB) standards to which India has already demonstrated its willingness to follow.

C. Incorporation of Climate Risk into Banking Supervision

Fourthly, RBI should also develop a Climate Risk Supervisory Framework that involves integrating the physical and transition risk examination in the routine inspection and regulation of the banks just like in the Bank of England. This should include the issuance of India particular climate scenarios, the national outbreak of the monsoons, the consequences of coastal flooding, and of heat stress, to aid in a consistent analysis of the scenarios that exists in the institutions, and to allow the gradual incorporation of climate risk in the supervisory review and assessment procedure. Guidelines on Climate Target Lending to Banks by UNEP FI can offer the methodology that could be employed in the framework development of the RBI.⁴⁴

E. Co-ordination System with Regulatory Authorities

Fifth, it would require institutionalisation of a special inter-regulatory coordination forum comprising of RBI, SEBI, IRDAI, and Ministry of Environment, Forest, and Climate Change to see the lapses in regulation of green finance, define and harmonise across sectors, and even coordinate India participation in global efforts of sustainable finance. This forum should be empowered to devise binding, cross sectoral environmental due diligence standards of financial transactions with the principles of polluter pays, which had been incorporated into the Indian environmental jurisprudence, being included in the financial regime.

X. Conclusion

As demonstrated in this paper, the legal and regulatory environment of the Indian green banking is still marked by a latent deficiency of legal binding stipulations, as well as institutional consistency despite a gradual progress in this field. The status quo of the present architecture, comprising of RBI advisory regulations, SEBI disclosure regulations and optional adherence to the international principles, is a topical, yet insufficient foundation to the systemic change of behaviour of the banking sector that the environmental and climate commitments of the Indian nation demand. The doctrine behind performance debate concludes that the RBI has

⁴⁴UNEP Finance Initiative, *Guidelines for Climate Target Setting for Banks* (2021).

adequate statutory ability to impose compulsory green banking regulation under the Banking Regulation Act but has thus far assumed the facilitative role rather than prescriptive one which has historically been the Indian banking regulating culture of gradualism.

The BRSR structure of SEBI has been seen to make major contributions to the promotion of the ESG disclosure standard to the listed banks though, excluding other substantive requirements and enforcement mechanisms disclosure requirements may only bring in a form of formalism of compliance without any real behaviour change. As observed in the case of SBI, YES Bank and NABARD, it can be observed that though an institution can act, as a result of its green banking endeavors, how the provisions of a structural regulatory imperative cannot be substituted by the practices of individual institution voluntarism. The comparative analysis reveals that EU and the UK have done much further on the effort to establish compulsory taxonomy-based frameworks of sustainable finance giving the models structures that India can cherry-pick to the local development setting.

The direction of creation of the international regulations (e.g. introduction of climate risk to the supervisory standards of the Basel Committee, to the G20 Sustainable Finance Roadmap) shows that the pressure on the upcoming market regulators to make them aligned with the international standards will increase exponentially in the next decade. India is also in an opportunity and indeed when it is compulsory regulation and not voluntary facilitation to green banking before such external intervention incurs more problematic adaptations. The recommendations provided in the paper such as statutory green taxonomy, mandatory climate risk disclosure, RBI supervising requirements, inter-regulatory co-ordination mechanism can provide a uniform legislative and regulatory map of this action. Development of a successful green banking system is not an environmental fantasy, but an institutional and legal necessity of the Indian financial system of the under-stated robustness and sustainability, in a new era of escalating climate risk.

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