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# **GREEN FINANCE THROUGH THE LENS OF CBDR-RC: LESSONS FROM INDIA AND MALAYSIA**

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## **ABSTRACT**

Green finance has emerged as a central pillar of the international legal response to climate change, yet the relationship between green finance mechanisms and the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR–RC) remains critically underexplored. This article asks a pointed question: Do the international legal and regulatory architectures governing green finance give meaningful effect to CBDR–RC, or do they impose structurally uniform obligations that disregard the developmental realities of the Global South?

To answer this, the article adopts a doctrinal methodology rooted in treaty interpretation, comparative legal analysis, and a close reading of soft-law instruments, multilateral financial norms, and national regulatory frameworks governing sustainable finance.

The analysis focuses on India and Malaysia as two significant non-annex I party that have actively engaged with green finance but face distinct fiscal, technological, and institutional constraints in doing so. The article argues that the prevailing green finance architecture, including the allocation practices of the Green Climate Fund, the standardization logic of the ICMA Green Bond Principles, and the design of national sustainable finance taxonomies, tends to privilege compliance models and reporting benchmarks shaped by developed country capacities. This orientation, the article contends, risks entrenching existing asymmetries in the international financial order rather than correcting them, which runs contrary to the distributive logic that CBDR–RC was meant to serve.

Through a comparative examination of Indian and Malaysian regulatory responses, the article exposes the gap between global normative ambitions and ground-level developmental priorities. It concludes by recommending differentiated compliance pathways, strengthened technology

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transfer commitments, and reformed climate fund governance structures as necessary steps toward a green finance framework that genuinely reflects CBDR–RC for developing economies.

**Keywords:** Green Finance; CBDR–RC; International Climate Law; Green Bonds; India; Malaysia

## Introduction

Climate change is indisputably among the most consequential challenges confronting the global community. The international legal response to this crisis has evolved through a series of International Environmental Agreements (IEAs), most prominent among them being the United Nations Framework Convention on Climate Change (UNFCCC),<sup>3</sup> the Kyoto Protocol (1997),<sup>4</sup> and the Paris Agreement (2015).<sup>5</sup> These IEAs, along with others such as the Convention on Biological Diversity (1992) and the Montreal Protocol (1987),<sup>6</sup> share something in common. Apart from being significant multilateral environmental agreements, all of them fix differentiated responsibilities on the parties, which is the basis of the principle of Common but Differentiated Responsibilities (CBDR) or, additionally, considering Respective Capabilities (RC). The differential treatment under the said principle takes various forms, including different emission reduction targets, supporting the transition efforts of developing and under-developed countries, and differentiated reporting requirements.<sup>7</sup>

The principle has assumed an important role in global deliberations on climate policy, while being relevant for other negotiations along the Developed-Developing divide in the international political sphere.<sup>8</sup> CBDR enables agreements for concerted global efforts toward climate change, yet paradoxically has proven to be a considerable obstacle in negotiating adjusted treaty instruments for successive commitment periods.<sup>9</sup> It is in this background that the present research

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<sup>3</sup>United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

<sup>4</sup>Kyoto Protocol to the United Nations Framework Convention on Climate Change art. 3, Dec. 11, 1997, 2303 U.N.T.S. 162 [hereinafter Kyoto Protocol].

<sup>5</sup>Paris Agreement art. 2(2), Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

<sup>6</sup>Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79; Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 1522 U.N.T.S. 3.

<sup>7</sup>Tuula Honkonen, *The Principle of Common But Differentiated Responsibility in Post-2012 Climate Negotiations*, 18 *Rev. Eur. Cmty. & Int'l Envtl. L.* 257, 260 (2009).

<sup>8</sup>Thomas Deleuil, *The Common but Differentiated Responsibilities Principle: Changes in Continuity after the Durban Conference of the Parties*, 21 *Rev. Eur. Cmty. & Int'l Envtl. L.* 271, 275 (2012).

<sup>9</sup>Pieter Pauw, *Different Perspectives on Differentiated Responsibilities*, German Development Institute Discussion Paper 6/2014, at 7 (2014).

explores the intersection of CBDR-RC with a domain that has received insufficient doctrinal scrutiny: the architecture of international green finance.

Green finance has emerged as a central instrument for mobilizing capital toward low-carbon development and climate resilience. Green bonds, climate funds and ESG disclosure frameworks vastly constitute the channel through which both the public and private capital is pushed towards climate obligations. Article 2.1(c) also committed the parties to finance low greenhouse gas emissions and climate-resilient development projects.<sup>10</sup> Furthermore, Article 9(1) obligates developed countries to provide financial resources to developing nations.<sup>11</sup> These two provisions, among others, give legitimacy to CBDR.

This research contends that the green finance mechanisms that privilege the compliance and reporting models engineered by the developed countries actually go against the distributive logic of CBDR-RC. The research also examines the stances of major developed and developing nations on CBDR-RC as those stances bear directly on the design and governance of green finance instruments.

The analysis is conducted through a strictly doctrinal methodology, rooted in treaty interpretation under the Vienna Convention on the Law of Treaties, comparative legal analysis, and a close reading of soft-law instruments, multilateral financial norms, national regulatory frameworks, and recent international judicial pronouncements. After establishing the conceptual and international legal framework in the second section, the article examines national stances on CBDR-RC in the third section. The fourth section analyses the Green Climate Fund. The fifth section scrutinises the ICMA Green Bond Principles. The sixth and seventh sections undertake detailed statutory and regulatory analyses of India's and Malaysia's green finance frameworks respectively. The eighth section advances recommendations, and the ninth section concludes with a critical synthesis.

## **CBDR-RC in International Environmental Law**

### **A. The Principle of CBDR-RC: From Rio to Paris**

CBDR-RC represents the effectuation of equity in international legal deliberations on climate change. It is enshrined under Principle 7 of the Rio Declaration<sup>12</sup> and the cumulative CBDR-RC finds treaty expression in the Preamble and Article 3 of the UNFCCC.<sup>13</sup> The principle seeks to

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<sup>10</sup>Paris Agreement, *supra* note 6, art. 2.1(c).

<sup>11</sup>Paris Agreement, *supra* note 6, art. 9(1).

<sup>12</sup>Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I), princ. 7 (June 14, 1992) [hereinafter Rio Declaration].

<sup>13</sup>UNFCCC, *supra* note 2, art. 3(1).

find a delicate equilibrium between the de jure equality of states (which implies that theoretically all states possess equal rights and responsibilities) and their de facto inequality based on varying circumstances and historical contexts. A bare reading of Principle 7 makes it clear that CBDR was nothing less than an application of the “Polluter Pays Principle” in the sphere of international environmental governance.<sup>14</sup>

The principle comprises two components. The first is the parties’ common responsibility toward environmental protection, meaning all states share the responsibility at both national and global levels. The second component, differentiated responsibilities, forms the basis of differentiation in states’ respective obligations, considering the varying levels of contribution of states to a specific environmental issue and their capacity to support mitigation and adaptation efforts.<sup>15</sup> The differentiation is rooted in the moral basis articulated by Shue, who distinguished between “luxury emissions” of the affluent and “subsistence emissions” of those seeking basic standards of living, arguing that it would be grossly unjust to demand that the impoverished limit their emissions while the wealthy do not make comparable sacrifices.<sup>16</sup>

The UNFCCC’s Preamble acknowledges that developed countries bear the largest share of responsibilities of both historical and current global emissions. Article 3(1) of the Framework establishes that developed parties should spearhead the global effort to combat climate change. While the principle is not justiciable by itself, it forms the basis of various IEAs that may be legally binding on the parties.<sup>17</sup> Cullet argues that this differentiation serves both corrective and distributive functions: corrective in the sense that it helps accounting for uneven historical GHG emissions, and distributive in the sense that it channelizes the finance towards those parties which are least capable of responding to climate change.<sup>18</sup>

#### B. The Evolution from Kyoto to Paris: Implications for Green Finance

Kyoto protocol introduced clear and strict differentiation, i.e. only Annex-I parties were made obligated to reduce their emissions, while developing parties bore no such mitigation obligations.<sup>19</sup> The Paris Agreement introduced what Voigt and Ferreira have termed “dynamic differentiation”, qualifying CBDR-RC with the phrase “in the light of different national

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<sup>14</sup>Philippe Sands et al., *Principles of International Environmental Law* 233 (3d ed. 2012).

<sup>15</sup>Philippe Sands et al., *Principles of International Environmental Law* 233 (3d ed. 2012).

<sup>16</sup>Henry Shue, *Subsistence Emissions and Luxury Emissions*, in *Climate Ethics* 200 (Stephen Gardiner et al. eds., 2010).

<sup>17</sup>Daniel Bodansky, *The Framework Convention/Protocol Approach*, WHO Technical Briefing Series, Paper 1, at 15 (1999).

<sup>18</sup>Philippe Cullet, *Differential Treatment in International Environmental Law* 52–78 (Ashgate 2003).

<sup>19</sup>Kyoto Protocol to the United Nations Framework Convention on Climate Change art. 3, Dec. 11, 1997, 2303 U.N.T.S. 162 [hereinafter Kyoto Protocol].

circumstances” and shifting from rigid annex-based categories to a bottom-up, self-differentiation approach through Nationally Determined Contributions (NDCs).<sup>20</sup> The requirement that each NDC must represent a progress from the previous one,<sup>21</sup> combined with the highest possible ambition standard, reflects a duty of care that should logically extend to the design of financial instruments through which climate action is financed.

As Rajamani observed, the principle was arguably diluted under the Paris Agreement, though two core normative expectations persist: developed countries must exercise leadership, and each country’s contribution must represent its fair share.<sup>22</sup> The critical question for this research is whether this dilution at the level of emissions commitments has been replicated at the level of green finance architecture. The article argues that it has.

### C. The Treaty Architecture of Climate Finance and Technology Transfer

The UNFCCC establishes a comprehensive finance architecture that embeds CBDR-RC. Article 4.3 mandates that Annex-I parties provide new financial resources to support developing country implementation, highlighting the importance of adequacy and predictability. Article 4.4 specifically requires assistance for particularly vulnerable developing countries in addressing adaptation costs. Finally, Article 4.5 obligates Annex II parties to take all practicable steps to promote facilitate and finance the transfer of environmentally sound technologies and knowledge to developing country parties.<sup>23</sup> Article 4.7 establishes direct conditionality. Developing parties’ effective implementation of their commitments hinges on the corresponding financial and technological commitments of developed countries. However, it recognises that economic and social development and poverty eradication are the foremost priorities for developing nations.<sup>24</sup>

The Paris Agreement reinforces these obligations through several provisions. Article 9(1) is legally binding, requiring developed country parties to provide financial resources to help developing countries with both mitigation and adaptation.<sup>25</sup> Article 9(3) provides that developed countries should continue to take the lead in mobilising climate finance, representing a progression beyond previous efforts.<sup>26</sup> Article 10 strengthens cooperative action on technology through the

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<sup>20</sup>Christina Voigt & Felipe Ferreira, ‘Dynamic Differentiation’: *The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement*, 5 *Transnat’l Envtl. L.* 285, 290 (2016).

<sup>21</sup>Paris Agreement, *supra* note 6, art. 4(3)–(4).

<sup>22</sup>Lavanya Rajamani, *Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics*, 65 *Int’l & Comp. L.Q.* 493, 500 (2016).

<sup>23</sup>UNFCCC, *supra* note 2, art. 4.5.

<sup>24</sup>UNFCCC, *supra* note 2, art. 4.7.

<sup>25</sup>Paris Agreement, *supra* note 6, art. 9(1).

<sup>26</sup>Paris Agreement, *supra* note 6, art. 9(3).

Technology Mechanism,<sup>27</sup> while Article 2.1(c) obliges parties to ensure finance flows align with a path towards low emissions and climate-resilient development.<sup>28</sup> The Addis Ababa Action Agenda (2015),<sup>29</sup> the Glasgow Climate Pact (2021),<sup>30</sup> and the COP29 NCQG Decision (2024)<sup>31</sup> further elaborate these obligations.

A fundamental structural tension, however, exists between these treaty commitments and the actual design of green finance instruments. Developing countries have expressed concern that emphasis on Article 2.1(c) could lead to developed countries shying away from their commitments under Article 9.<sup>32</sup> The universalist pretensions of market-based green finance standards, designed predominantly by institutions headquartered in the Global North, risk producing a green finance architecture that is structurally exclusionary toward the Global South. These doctrinal foundations, this article argues, must logically extend to the design of financial instruments and regulatory architectures through which climate action is financed.

### **Understanding the Friction: National Stances on CBDR-RC and Green Finance**

There is a scholarly consensus on CBDR-RC being based on the principles of equity and fairness. However, the very concepts of equity and fairness are bound to be interpreted differently by different countries, given the diversity in their economic and social backgrounds. It hence becomes imperative to understand the different stances taken by major stakeholders on CBDR-RC, especially as those stances directly shape the architecture of green finance. This section examines the positions of the European Union, the United States, China, India, and Malaysia.

#### **A. The European Union**

The European Union aspires to make the continent climate-neutral by 2050, a target aligned with the Paris Agreement.<sup>33</sup> Strict and ambitious emission-reduction targets have arguably made the EU assume global climate leadership.<sup>34</sup> The EU not only ratified Kyoto and Paris but made substantial domestic developments, including the successful launch of an Emissions Trading System in 2005. However, certain aspects of its climate policy have drawn criticism from

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<sup>27</sup>Paris Agreement, *supra* note 6, art. 10.

<sup>28</sup>Paris Agreement, *supra* note 6, art. 2.1(c).

<sup>29</sup>Addis Ababa Action Agenda, U.N. Doc. A/RES/69/313 (July 27, 2015).

<sup>30</sup>Decision 1/CMA.3, *Glasgow Climate Pact*, FCCC/PA/CMA/2021/10/Add.1, ¶ 18 (Nov. 2021).

<sup>31</sup>Decision 1/CMA.6, *New Collective Quantified Goal on Climate Finance*, FCCC/PA/CMA/2024/16/Add.1 (Nov. 2024) [hereinafter NCQG Decision].

<sup>32</sup>World Resources Institute, *What Is the Paris Agreement's Article 2.1(c) on Climate Finance, and Why Does it Matter?* (2025).

<sup>33</sup>Andrew Jordan & Tim Rayner, *The Evolution of Climate Policy in the European Union*, in *Climate Change Policy in the European Union* 52–80 (2010).

<sup>34</sup>Council of the European Union, *Latest EU Policy Actions on Climate Change*, <https://www.consilium.europa.eu/en/policies/climate-change/> (last visited Feb. 1, 2026).

developing nations. The Carbon Border Adjustment Mechanism (CBAM),<sup>35</sup> wherein imports are taxed to account for carbon costs, has been viewed by India and other developing nations as a protectionist measure that violates the spirit of CBDR-RC.<sup>36</sup> The EU has been seen to argue for legally binding environmental agreements accounting for all major emitters, and its stance on differentiated responsibilities is that commitments should be transparent, quantifiable, comparable, verifiable, and ambitious.<sup>37</sup>

At COP29 in Baku (November 2024), the EU played a key role in shaping the New Collective Quantified Goal on climate finance, fixing the targeted flow from developed countries at 300 billion US dollars annually by 2035, with an aspirational target of 1.3 trillion from all actors.<sup>38</sup> This emphasises the community's position that developed parties should assume greater obligation in financing climate action, while concurrently insisting upon contributions from emerging nations. What is doctrinally significant for this research is that the EU's leadership in green finance standard-setting (through the EU Taxonomy Regulation, the European Green Bond Standard, and CBAM) has effectively exported European compliance benchmarks as the global default, creating structural barriers for developing-country participation that the EU's negotiating posture on finance does not adequately address.

## **B. The United States of America**

Apart from being the largest historical emitter, the per capita emissions of the United States (more than 13 tonnes) are significantly higher than those of other top-ranked emitters. Being the largest historical emitter, it was bound to have significant responsibilities compared to other Annex-I countries. Arguably for this reason, it was the most significant critic of the Kyoto Protocol and did not ratify it.<sup>39</sup> The US Senate's Byrd-Hagel Resolution of 1997 established that it would not be a party to any international agreement around climate change unless binding targets were set for developing countries as well.<sup>40</sup> Its main argument against CBDR is that the exemption given to developing countries would put Annex-I parties at an unfair economically disadvantageous position.<sup>41</sup>

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<sup>35</sup>Regulation (EU) 2023/956 Establishing a Carbon Border Adjustment Mechanism, 2023 O.J. (L 130) 52 [hereinafter CBAM Regulation].

<sup>36</sup>Press Information Bureau, Government of India, *India Does Not Rush into Trade Negotiations* (Jan. 2024).

<sup>37</sup>Steffen Kallbekken et al., *Equity and Spectrum of Mitigation Commitments in the 2015 Agreement*, KTH Royal Institute of Technology (2014).

<sup>38</sup>IISD Earth Negotiations Bulletin, *Summary Report: UN Climate Change Conference-Baku*, Nov. 11–22, 2024.

<sup>39</sup>Jon Hovi et al., *Why the United States Did Not Become a Party to the Kyoto Protocol*, 18 *Eur. J. Int'l Rel.* 129, 135 (2010).

<sup>40</sup>S. Res. 98, 105th Cong. (1997) (Byrd-Hagel Resolution).

<sup>41</sup>Robyn Eckersley, *Environmental Multilateralism in Crisis?* (ISA Annual Convention, Apr. 2013).

The Trump administration moved with unprecedented speed upon returning to office in January 2025, directing immediate withdrawal from Paris through Executive Order 14162.<sup>42</sup> Most significantly, a Presidential Memorandum dated January 7, 2026 announced the intention to withdraw from the UNFCCC itself.<sup>43</sup> Under Article 25 of the UNFCCC, this withdrawal would simultaneously terminate US participation in all UNFCCC protocols.<sup>44</sup> This is the most dramatic illustration of the ongoing friction, where the world's largest historical emitter seeks to exit the international climate regime entirely. The US withdrawal has profound implications for green finance: the GCF faces potential loss of its largest contributor, and the credibility of developed-country finance commitments, upon which the CBDR-RC architecture fundamentally depends, is gravely undermined.

### C. China

High economic growth over the past two decades and the second-largest population place China at the centre-stage of international climate deliberations, with its emissions amounting to more than one-fourth of the global annual total.<sup>45</sup> China interprets CBDR in a manner that implies a compelling legal nature, urging developed countries to comply with the principle.<sup>46</sup> To its credit, China has established a domestic carbon market in 2021, which is currently the largest national emissions market in the world. China's role in green finance is significant: it is the world's largest green bond issuer, and the EU-China Common Ground Taxonomy represents a pioneering effort at cross-jurisdictional alignment. Yet China's continued investments in coal and its resistance to binding fossil fuel phase-out language demonstrate the tensions between its green finance ambitions and its developmental trajectory.

### D. India

Although India is the third-largest GHG emitter globally, its per-capita emissions are among the smallest. Having the largest population with a significant share living under poverty makes economic development its topmost priority. Scholars have argued that India has, for a long time, been glued to a do-nothing position on climate action.<sup>47</sup> This stance, however, may be contested by its voluntary mitigation efforts and ongoing transition toward renewable energy. India

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<sup>42</sup>Exec. Order No. 14,162, *Unleashing American Energy*, 90 Fed. Reg. 4949 (Jan. 20, 2025).

<sup>43</sup>Presidential Memorandum, *Withdrawing the United States from International Organizations* (Jan. 7, 2026).

<sup>44</sup>UNFCCC, *supra* note 2, art. 25.

<sup>45</sup>Huifang Tian & John Whalley, *China's Participation in Global Environmental Negotiations*, NBER Working Paper No. 14460, at 8 (2008).

<sup>46</sup>Deleuil, *supra* note 9, at 275.

<sup>47</sup>D. Raghunandan, *India's Climate Policy: Squaring the Circle*, 43 *IDS Bulletin* 122, 125 (2012).

announced ambitious NDCs under Paris, including the goal of reaching net zero by 2070.<sup>48</sup> At COP29 in Baku, India emerged as one of the most vocal defenders of CBDR-RC, leading the Like-Minded Developing Countries and BASIC bloc. India's chief negotiator delivered a scathing assessment of the NCQG as incompatible with the principle of Common but Differentiated Responsibilities.<sup>49</sup> At the ICJ climate hearings in December 2024, India emphasised that if the contribution to global environmental degradation is unequal, the responsibility should also be unequal.<sup>50</sup>

### **E. Malaysia**

Malaysia's position on CBDR-RC is articulated primarily through its NDC and through ASEAN joint statements rather than high-profile individual negotiating positions. Malaysia's NDC explicitly conditions ten per cent of its forty-five per cent greenhouse gas intensity reduction target on receipt of climate finance, technology transfer, and capacity building from developed countries, directly invoking the Article 4.7 conditionality.<sup>51</sup> This conditionality adapted by Malaysia is quite significant as it operationalises CBDR-RC. This stance implies that Malaysia has made its domestic commitments contingent upon tangible international action.

What is clear from the discussion on the stances of these countries is that the two blocs of nations have fundamental differences on the allocation of climate obligations. While the developed parties argue for universally applicable standards on responsibilities, the developing parties insist on differentiation. The following section discusses certain green finance instruments which embody this tension.

### **The Green Climate Fund**

The Green Climate Fund (GCF), established at COP 16 in Cancún (2010) was primarily designed to give effect to CBDR-RC in climate finance. It follows differentiation through several provisions such as: a 24-member Board having equal representation from developed and developing countries; a 50-50 fund allocation between mitigation and adaptation efforts; at least 50 percent of the total fund allocated for adaptation particularly directed towards vulnerable countries; and a direct access of funds, enabling parties to access funds without international interference.<sup>52</sup>

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<sup>48</sup>Press Information Bureau, Government of India, *Cabinet Approves India's Updated NDC* (Aug. 2022).

<sup>49</sup>Climate Home News, *India Fires Warning Shot with Rejection of Finance Deal at COP29* (Nov. 25, 2024).

<sup>50</sup>ICJ, *Written Reply of India*, <https://www.icj-cij.org/node/205065>.

<sup>51</sup>Malaysia's Nationally Determined Contribution (Updated Submission, July 2021), at 5.

<sup>52</sup>GCF Governing Instrument, FCCC/CP/2011/9/Add.1, Decision 3/CP.17, Annex (2011).

Data wise, by late 2024 the Global Climate Fund had invested around 7.3 billion USD in adaptation efforts. This brings its total portfolio to 13.5 billion USD across 243 projects.<sup>53</sup> While GCF's figures are substantial, it is not free of criticism. The fund's five-step accreditation process demands parties meet specific environmental and social standards and gender requirements based on the established international financial institution benchmarks. However, it has meant a challenge in participation by the developing members lacking these 'developed world's social standards. The Lowy Institute found the GCF to be slow and difficult to work with, with accreditation requirements being burdensome for national institutions.<sup>54</sup> The GCF's Independent Evaluation Unit's Second Performance Review revealed that country ownership in GCF governance is inconsistent and fragmented.<sup>55</sup>

An interesting interpretation with regards to the GCF and its allocation is done by the Heinrich Böll Foundation, when it observed that stillness in pledges (mainly from developed parties) makes the GCF continue only at the status quo level<sup>56</sup> Middle-income developing countries like India and Malaysia face a peculiar disadvantage as they must compete with LDCs and SIDS that benefit from the GCF adaptation floor. This combination of chronic underfunding (aggravated by the prospective loss of US contributions following its announced UNFCCC withdrawal) with in-fighting between non-annex-I parties represent a failure to operationalize CBDR-RC in practice.

### **The ICMA Green Bond Principles**

The ICMA Green Bond Principles (GBP), introduced in 2014, have become the de-facto global standard for green bond issuance, especially because they are referenced by approximately 97 per cent of sustainable bonds issued globally.<sup>57</sup> The GBP has four core structural components: "Use of Proceeds, Process for Project Evaluation and Selection, Management of Proceeds, and Reporting".<sup>58</sup> Importantly, these principles are voluntary.

However, their near-universal adoption has made them practically obligatory for bond-issuers targeting international capital markets. The catch here is that the compliance infrastructure cost including external reviews, verification, and annual impact reporting disproportionately burdens the issuers from developing-countries. Banga argues that developing countries lack technical skills for monitoring and assessment, and face minimum bond size challenges that exclude smaller

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<sup>53</sup>Green Climate Fund, *Annual Progress Report 2024*, at 5–8 (2025).

<sup>54</sup>Lowy Institute, *Revitalising the Green Climate Fund* 3–5 (2023).

<sup>55</sup>GCF Independent Evaluation Unit, *Second Performance Review* 45, 52 (2023).

<sup>56</sup>Heinrich Böll Stiftung, *GCF Replenishment Sends Some Signals – Just Not the Right Ones* (Oct. 12, 2023).

<sup>57</sup>ICMA, *Green Bond Principles* 3–5 (June 2025) [hereinafter GBP 2025].

<sup>58</sup>*Id.*

issuances.<sup>59</sup> The OECD has also highlighted that institutional investors allocate only a small proportion of their portfolios to developing countries because of regulatory constraints.<sup>60</sup>

Developing countries like India and Malaysia do not have reporting mechanisms, compliance requirements, and taxonomies like the developed countries. An instance of this is the European Green Bond Standard (Regulation 2023/2631)<sup>61</sup> which requires mandatory alignment with the EU taxonomy,<sup>62</sup> external review by European Securities and Markets Authority (ESMA)-registered reviewers. This simply implies that developed countries have developed the ability to push the transactional conditions in their own favour, which is not the case with the developing countries. Undoubtedly, the Green Bond Architecture marginalises the Global South.

## **India's Green Finance Regulatory Framework**

### **A. SEBI's Green Debt Securities Framework**

The Securities and Exchange Board of India first introduced green bonds through Circular SEBI/HO/DDHS/CIR/P/2017/30 (in May 2017), defining green debt securities largely inspired by the ICMA GBP.<sup>63</sup> It expanded the framework's ambit by a 2023 amendment. The amended regulation 2(1)(q) expanded the definition of green debt securities to cover "blue bonds" (sustainable water management), "yellow bonds" (solar energy), and "transition bonds" aligned with transition efforts under India's NDCs.<sup>64</sup> SEBI also laid down certain requirements to prevent greenwashing, mandated third-party review, and improved disclosure requirements.<sup>65</sup>

However, what demands attention is that SEBI's list of green categories under the 2023 framework is exhaustive, unlike the ICMA GBP's indicative list. The implications of this are considerable. An exhaustive list restricts issuer discretion and narrows the scope for creativity (as its might be interpreted as greenwashing). This works to a potential disadvantage to a developing economy like India. At the same time, it constrains market innovation and limits the flexibility that the GBP's open-ended approach affords to developed-country issuers. This trade-off reflects a regulatory philosophy calibrated to India's specific institutional constraints, and it is precisely the kind of

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<sup>59</sup>Jogchum Banga, *The Green Bond Market: A Potential Source of Climate Finance for Developing Countries*, 9 *J. Sustainable Fin. & Inv.* 17, 24 (2019).

<sup>60</sup>OECD, *Green, Social and Sustainability Bonds in Developing Countries* 18–22 (2023).

<sup>61</sup>Regulation (EU) 2023/2631 on European Green Bonds, 2023 O.J. (L 2631) 1 [hereinafter EU GBS Regulation].

<sup>62</sup>Regulation (EU) 2020/852, 2020 O.J. (L 198) 13 [hereinafter EU Taxonomy Regulation], art. 3.

<sup>63</sup>SEBI, Circular No. SEBI/HO/DDHS/CIR/P/2017/30 (May 30, 2017) [hereinafter SEBI GDS Circular 2017].

<sup>64</sup>SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2023, Reg. 2(1)(q).

<sup>65</sup>SEBI, Circular No. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 (Feb. 6, 2023).

contextual adaptation that a CBDR-RC-compliant green finance architecture should accommodate rather than penalise.

The inclusion of transition bonds tied to India's NDCs is the most critical innovation for the CBDR-RC analysis. Under the GBP and the EU Taxonomy, activities that do not meet absolute emission thresholds, however essential they may be to a developing country's energy transition, are excluded from green categorisation. India's framework rejects this binary logic. Transition bonds permit capital mobilisation for activities that would not qualify as green under developed-country taxonomies but are essential for India's pathway from coal dependence toward its net-zero-by-2070 target. This instrument-level operationalisation of CBDR-RC represents a model that the international green finance architecture has yet to incorporate.

### **B. India's Sovereign Green Bond Framework**

India's Sovereign Green Bond Framework (November 2022), aligned with the ICMA GBP (2021 edition) and awarded a Medium Green rating by CICERO, governs what became a landmark issuance program.<sup>66</sup> Through eight tranches across three fiscal years, India issued approximately 477 billion Indian Rupees (approximately 5.7 billion US dollars) in sovereign green bonds, creating a domestic green yield curve across five-year, ten-year, and thirty-year tenors. Cumulative green, social, sustainability, and sustainability-linked issuance from India reached 55.9 billion US dollars by December 2024.<sup>67</sup>

However, the CICERO Medium Green rating itself exposes a structural bias in international green certification. The rating reflects CICERO's assessment that certain eligible categories under India's framework (particularly Metro Rail Transit projects and energy efficiency improvements in existing fossil fuel infrastructure) do not meet the most ambitious decarbonisation standards. From a CBDR-RC perspective, this assessment fails to account for the developmental context: for India, a country where over 250 million people still lack reliable public transport, Metro Rail constitutes a transformative shift from private vehicle dependence to mass transit, a far greater marginal emission reduction than comparable investments in developed countries where mass transit infrastructure is already mature. The Medium Green rating therefore penalises India for not meeting benchmarks designed with European transport infrastructure as the baseline, illustrating the compliance gap this research identifies.

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<sup>66</sup>DEA, Ministry of Finance, *Framework for Sovereign Green Bonds* 4–9 (Nov. 2022) [hereinafter India SGBF].

<sup>67</sup>Climate Bonds Initiative, *India Sustainable Debt: State of the Market 2024* 5 (2025).

### C. The Reserve Bank of India's Green Deposit Framework

The Reserve Bank of India's Framework for Acceptance of Green Deposits (April 2023) made India among the first countries globally with such a framework.<sup>68</sup> A close interpretation reveals a carefully calibrated nature of this framework. Section 4 of the framework outlines eligible green activities, encompassing renewable energy, energy efficiency, clean transportation, green buildings and biodiversity conservation, etc.<sup>69</sup> Interestingly, the framework under the same section explicitly excludes certain activities including fossil fuel extraction, nuclear power generation, and hydropower projects exceeding 25 MW.

What catches the reader's eye is the 25 MW hydropower exclusion. This exclusion is more stringent than many international green bond frameworks, which usually permit large-scale hydropower projects. What could be the reason of such a stringency? This exclusion reflects on an environmental context specific to India. Large hydropower projects in the Himalayan region have been considered to lead to ecological damage, displacement of indigenous populations, and seismicity fears. The regulation thus represents an interpretation of the EU Taxonomy's "Do No Significant Harm principle", not copy-pasted as it is from the EU, but adjusted to India's distinct environmental realities.

The central bank in its 2023 "Report on Currency and Finance" estimated that India requires at least 2.5 per cent of GDP annually until 2030 to support its green transition efforts,<sup>70</sup> highlighting the humongous scale of the financing challenge. To ensure the flow of finance towards transition activities, the RBI (in November 2025) issued comprehensive Master Directions on Climate Finance.<sup>71</sup> These Directions were issued under Sections 21 and 35A of the Banking Regulation Act, 1949,<sup>72</sup> meaning the RBI has assumed statutory authority to issue binding directions to banking companies on matters concerning their lending and investment activities. The legal implication of this authority is that such directions issued by the RBI carry the force of subordinate legislation, meaning non-compliance of these would be considered a breach of the Banking Regulation Act, which would ultimately attract penal consequences. This is in contrast to the

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<sup>68</sup>RBI, *Framework for Acceptance of Green Deposits*, Circular Apr. 11, 2023, ss 3–6 [hereinafter RBI Green Deposit Framework].

<sup>69</sup>*Id.* s 4 (eligible sectors include renewable energy, clean transportation, sustainable water management; exclusions include fossil fuels, nuclear power, hydropower exceeding 25 MW).

<sup>70</sup>RBI, *Report on Currency and Finance 2022-23: Towards a Greener Cleaner India* 78 (Apr. 2023).

<sup>71</sup>RBI, Master Direction – Climate Finance and Management of Climate Change Risks Directions, 2025, RBI/2025-26/32, Ch. II–IV (Nov. 2025) [hereinafter RBI Climate Directions 2025].

<sup>72</sup>Banking Regulation Act, 1949, ss 21, 35A (India).

voluntary nature of the ICMA GBP and establishes India's inclination towards a mandatory statutory approach to green finance rather than soft-law instruments in the international sphere.

#### **D. The Carbon Credit Trading Scheme**

India's sustainable ambitions are sought to be strongly supported by its upcoming National Carbon Market, devised by the Carbon Credit Trading Scheme (CCTS). The CCTS operates under the Energy Conservation (Amendment) Act 2022,<sup>73</sup> and employs an intensity-based system rather than absolute caps, allowing continued development while reducing emissions per unit of GDP.<sup>74</sup> Nine industrial sectors covering approximately 700 million tons of CO<sub>2</sub> equivalent face compliance obligations beginning in 2025-26, with emission intensity reduction targets ranging from 2.8 per cent to 15 per cent depending on sectoral circumstances.<sup>75</sup> This intensity-based approach is a direct application of the CBDR-RC logic at the domestic level: it acknowledges that India's absolute emissions must rise as its economy develops, while ensuring that the carbon intensity of that development progressively declines. The EU's CBAM, by contrast, applies an absolute carbon cost to imports regardless of the exporting country's developmental stage, a design that India has consistently argued violates CBDR-RC by functioning as a non-tariff trade barrier.<sup>76</sup>

### **Malaysia's Green Finance Regulatory Framework**

#### **A. The Climate Change and Principle-based Taxonomy**

Issued by Bank Negara Malaysia in April 2021 under the Financial Services Act 2013 and the Islamic Financial Services Act 2013, the Climate Change and Principle-based Taxonomy (CCPT) outlines a framework for tax classification,<sup>77</sup> is distinct from the EU Taxonomy.<sup>78</sup> The CCPT uses five guiding principles, namely "Climate Change Mitigation (GP1)", "Climate Change Adaptation (GP2)", "No Significant Harm to the Environment (GP3)", "Remedial Measures to Transition (GP4)", and "Prohibited Activities (GP5)".<sup>79</sup>

Unlike the EU Taxonomy, which uses fixed quantitative thresholds (e.g., grams of CO<sub>2</sub> per kWh for energy generation) to determine the green (or non-green) status of an activity, the CCPT allows financial institutions to assess activities based on the above-mentioned principles. The

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<sup>73</sup>Energy Conservation (Amendment) Act, 2022, No. 19 of 2022, s 14(w) (India).

<sup>74</sup>Carbon Credit Trading Scheme, 2023, Gazette of India, Extraordinary, Pt. II, Sec. 3(ii), ss 3-6 (June 28, 2023).

<sup>75</sup>ICAP, *India Notifies Emission Intensity Targets for Nine Sectors* (2024).

<sup>76</sup>Press Information Bureau, Government of India, *India Does Not Rush into Trade Negotiations* (Jan. 2024).

<sup>77</sup>Financial Services Act 2013, s 143 (Malaysia); Islamic Financial Services Act 2013, s 155 (Malaysia).

<sup>78</sup>Bank Negara Malaysia, *Climate Change and Principle-based Taxonomy* 5-10 (Apr. 30, 2021) [hereinafter BNM CCPT].

<sup>79</sup>BNM CCPT, *supra* note 77, at 8.

classification under CCPT categorises activities into three categories namely, Climate Supporting, Transitioning, and Watchlist.<sup>80</sup> It is interesting to note that the watchlist category allows the continued financing of environmentally harmful activities, provided financial institutions monitor them and work with borrowing industry towards transition. This innovative approach prevents strict exclusions and ensures a systematic economic transition.<sup>81</sup>

This design philosophy is relevant to the application of CBDR-RC. The CCPT differentiates by accommodating varying institutional capacities instead of imposing uniform quantitative thresholds from developed-country benchmarks. An EU-style taxonomy excluding fossil fuel-adjacent and deforestation-linked activities would threaten Malaysia's economic stability, given its economic reliance on Palm oil industry and crude oil extraction. The CCPT's principle-based approach acknowledges this while creating regulatory incentives for transition.

## **B. The Green Technology Financing Scheme and Institutional Challenges**

Malaysia's Green Technology Financing Scheme (GTFS) has undergone five revisions since 2010. Initially, it had a 3.5 billion Ringgit allocation with interest rate rebates and government guarantees. This evolved into GTFS 5.0 (2025-2026) with a significantly reduced allocation of 1.0 billion Ringgit.<sup>82</sup> The energy sector accounts for 87 per cent of approved projects for green finance. Jalil identifies key reasons for such skewed financial allocation to poor credit ratings of applicants, limited knowledge among financial institutions, and time-consuming processes, highlighting an overall lack of awareness when it comes to implementation.<sup>83</sup>

Surprisingly, Malaysia as of early 2026 has no comprehensive climate change legislation or active judicial precedents in force. The proposed Climate Change Bill has been criticised by scholars for vague language and failing to compel binding emissions targets.<sup>84</sup> The absence of a dedicated climate legislation creates a significant challenge for Malaysia's green finance framework. Unlike India, where the Energy Conservation Act, and the Environment (Protection) Act (among others) provide a fertile ground for green finance regulation, Malaysia's green finance regulation rests almost entirely on central bank and securities commission directions. These instruments lack the statutory authority to push for change across the economy.

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<sup>80</sup>*Id.* at 12–14.

<sup>81</sup>*Id.* at 14–15.

<sup>82</sup>MGTC, *Green Technology Financing Scheme*, <https://www.mgtc.gov.my/our-services/green-technology-financing-scheme/> (last visited Feb. 1, 2026).

<sup>83</sup>Ahmad Zafarullah Abdul Jalil et al., *The Perspectives of Stakeholders on the Effectiveness of Green Financing Schemes in Malaysia*, 4 *Green Fin.* 450, 460 (2022).

<sup>84</sup>Columbia Law School, Sabin Center, *[Act] of All Trades, Litigable to None* (Mar. 25, 2025).

## **Toward Differentiated Compliance: Way Ahead**

The foregoing analysis establishes certain challenges in the operationalisation of CBDR-RC within the architecture of international green finance. The instant section offers some recommendations to tackle these challenges.

First, differentiated compliance standards when it comes to green bonds. The ICMA Green Bond Principles should follow tier based (as in the UNFCCC mechanisms) compliance requirements adjusted to the issuer capacities. Meaning, developing-country issuers should be allowed lenient reporting, relaxed external review requirements (especially for smaller issuances), and longer transition periods.

Second, the GCF's accreditation process must be amended to reduce barriers for National Direct Access Entities. A separate classification should be created for middle-income developing countries (including India and Malaysia) that face massive transition financing challenges. This would also take care of the potential in-fighting between the non Annex-I parties.

Third, technology transfer commitments should be more strongly implemented. The ICJ's 2025 advisory opinion giving legally binding effect to technology transfer obligations provides a strong basis for this reform. With regards to the effectiveness of Technology Transfer, Rimmer observes that its effectiveness has been hampered by inadequate funding.<sup>85</sup>

Fourth, taxonomy pluralism and mutual recognition. National taxonomies calibrated to domestic developmental priorities, like India's draft taxonomy and Malaysia's CCPT, should be recognised as legitimate governance frameworks. Common ground with regards to taxonomy should be worked out to reduce cross-border transaction costs while respecting differentiated approaches.

Fifth, possibilities must be explored to expand the scale of NCQG. As the 300 billion US dollar target falls far short of estimated needs of 5 to 6 trillion annually.<sup>86</sup> The predominance of loans over grants perpetuates debt vulnerability.<sup>87</sup> A significant proportion should be channelled through grant-based mechanisms with differentiated access criteria.

## **Conclusion**

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<sup>85</sup>Matthew Rimmer, *Article 10 of the Paris Agreement 2015: Technology Development and Transfer*, in *A Commentary on the Paris Agreement* 195 (Van Calster & Reins eds., Edward Elgar 2021).

<sup>86</sup>Climate Policy Initiative, *Global Landscape of Climate Finance 2024* 8 (2024).

<sup>87</sup>OECD, *Aggregate Trends of Climate Finance Provided and Mobilised by Developed Countries in 2013–2022* (May 2024).

CBDR-RC is one of the most important environmental principles which is now recognised as a fundamental norm by the ICJ and this principle is a byproduct of the north and south divide in environmental governance. It ensures that global climate responses reflect the different circumstances of states: their historical emissions, financial capacity, and developmental necessities. Enunciated in Principle 7 of the Rio Declaration and Article 3(1) of the UNFCCC, CBDR-RC highlights significant climate agreements, such as the Kyoto Protocol and the Paris Agreement. Its ethical basis, as noted by Shue, “differentiates luxury emissions of the rich from the subsistence emissions of the poor”<sup>88</sup>. Its legal footing, acknowledged by the ICJ in 2025, extends across climate finance and technology transfer.<sup>89</sup>

The article demonstrates that the current green finance structure fails to realise CBDR-RC. The Green Climate Fund (GCF), faces structural weaknesses: restrictive accreditation benchmarks, prolonged underfunding, and payment failures. Developing parties are disadvantaged by processes developed by international financial institutions. The risk of lost contributions, particularly following the US withdrawal from the UNFCCC, exacerbates the gap between pledged and delivered commitments.

Fiscal instruments also shed light upon structural injustices. The ICMA Green Bond Principles, have become de-facto requirements for access to market, imposing unequal compliance costs on developing-country issuers. Inadequate domestic service suppliers and currency risks raise these costs further. The European Union Green Bond Standard, with compulsory affiliation to its Taxonomy, deepens barriers by adopting standards adjusted to European benchmarks. Instead of rectifying fiscal asymmetries, current green bond frameworks strengthen them.

International classification design magnifies these challenges. The EU Taxonomy’s dual approach eliminates many interim activities significant for developing nations. Emission thresholds lean in favour of advanced economies, punishing countries like India and Malaysia, where dependence on fossil is a structural inheritance requiring gradual evolution with external support.

India’s response to these constraints is addressed through the SEBI’s Green Debt Securities System which incorporates transition bonds. The RBI’s Green Deposit Framework and Draft Climate Finance Taxonomy supports standards in line with India’s developmental path. The

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<sup>88</sup> Henry Shue, *Subsistence Protection and Mitigation Ambition: Necessities, Economic and Climatic*, 21 Brit. J. Pol. & Int’l Rel. 251 (2019).

<sup>89</sup> *Obligations of States in Respect of Climate Change*, Advisory Opinion, 2025 I.C.J. (July 23).

Carbon Credit Trading Scheme adopts an intensity-based model, aligning development with emission reduction per GDP unit.

Yet, domestic novelty alone cannot overcome systematic international obstacles. India's green financing gap leaves more than three-quarters unmet, while Malaysia conditions part of its NDC on external support, highlighting commitments under UNFCCC Articles 4.3, 4.5, 4.7, and Paris Agreement Article 9. Unfulfilled promises of technology and finance transfer, and the export of compliance models devised in the Global North, limits developing countries' involvement in the green finance system.

This article advocates the foundation of differentiated compliance pathways in green bond standards to diminish the strain on developing countries, improved GCF governance with dedicated allocation windows for middle-income and vulnerable states, and enforceable technology transfer provisions that move beyond 'effectively non-binding' commitments. It further calls for taxonomy diversity, allowing national and regional structures to coexist rather than meet on a single EU-centric model. Finally, a substantial scale-up of grant-based finance under the NCQG is vital to make sure that the countries can fulfil their targets without worsening debt burdens. These measures are grounded in binding treaty obligations and the recent jurisprudence that recognises CBDR-RC as legally enforceable. The principles of justice, equity and fairness must guide the restructuring of the green finance order, making sure that the green transition acknowledges rather than entrenching inequality and that developing countries are fully supported in realising their climate ambitions.