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THE POLICY FRAMEWORK ON ENVIRONMENTAL SOCIAL GOVERNANCE

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Abstract

Modern industrialization encounters challenges to our environmental health leading to apparent discernible ramifications. Forthwith corporate law needs to analyze its policies regarding environment for its augmentation. A robust framework on policy framework on environmental social governance (ESG) in corporate law integrates sustainability, ethical governance and social responsibility into business strategy. Globally ESG investments are projected to reach \$33.9 trillion by 2026 from \$18.4 trillion in 2021 with a compound annual growth rate (CAGR) of 12.9% constituting more than 20% of all assets under management signaling that sustainability serves to be substantial in corporate law. It represents dramatic and continuing shift in asset and wealth management industry according to PwC's asset and Wealth Management Revolution 2022 report. Section 135 of The Company law deals with Corporate Social Responsibility (CSR) that every company that fulfills certain condition has to spend 2% of its average net profit made during previous three financial year integrates itself with ESG.

The Ministry of Environment, Forest, and Climate Change plays a pivotal role as federal agency responsible for implementation and oversight of environment laws in India.

The Environmental compliance landscape poses challenges due to uneven law enforcement. Top listed companies shall file and undergo audits for sustainability and ESG compliance initiatives under BRSR and BRSR core reporting obligation.

This research paper investigates modern policy framework on ESG and challenges faced in implementing law.

KEYWORDS: ESG, Corporate law, CSR, Industrialization, Policy Framework

INTRODUCTION

Environment, Social Governance (hereinafter referred to, as (“ESG”)) is a framework developed to be integrated into business strategy of an organization and takes into account the requirement and opportunities to create value for all key stakeholders (such as employees, financiers, suppliers and customers). ESG paradigm has emerged as indispensable consideration within contemporary world transcending sectoral boundaries and establishing itself a critical determinant in defining environmental and corporate laws. Corporate leaders increasingly articulate their commitments to decarbonization and net zero objectives; a nuanced evaluation of ESG oriented investment from long-term perspective. In capital market, some investor use ESG criteria to evaluate companies and determine their investment plans, a practice known as ESG investing¹. The contemporary global landscape underscores the interrelationship between Environmental, Social and Governance (ESG) principles and businesses practices. ESG marked turning point in the evolution of the financial system, as it rapidly became an international movement of investors². The environmental factor is composed of company’s operations, long- lasting environmental impacts and what is company doing to positively steward the natural world³. ESG is important to consider when investing. It is not about having high return; it is also about ensuring your business impact does not contribute to environmental degradation or human rights abuses. ESG is incorporated into corporate governance frameworks so that companies can better⁴.

India has robust corporate governance and ESG framework rooted in the Companies Act, 2013 and SEBI LODR Regulations mandating board independence, CSR, ethical conduct, and comprehensive disclosures⁵

Despite legal standards enforcement remains inconsistent. Issues arise around the actual independence of directors, effective board performance evaluation; transparent disclosure practices and accountability for misconduct especially after high profile scandals such as

¹ Alexander S. Gillis (2024) What is ESG (Environmental, Social and Governance?), tech target <https://www.techtarget.com/whatis/definition/environmental-social-and-governance-ESG>

² John Hale, *A Broken Record: Flows of U.S. Sustainable Funds Again Reach New Heights*, Morningstar, (Jan 21, 2021) 1), <https://www.morningstar.com/sustainable-investing/broken-record-flows-us-sustainable-funds-again-reach-new-heights>.

³ David McSweeney & Lisa Shelton, *Corporate Financial Disclosures and Environmental, Social and Governance Concerns Evolving Issues 35 Nat.Res & Env't* (Summer 2020).

⁴ Adrian Camara, *The Importance of ESG in Corporate Governance*, <https://corporatefinanceinstitute.com/resources/esg/importance-of-esg-in-corporate-governance/>

⁵ Shardul S. Shroff, Radhika M. Dudhat, Priyanka Seth, *Legal 500 Comparative Guide 2025*,

Satyam and IL&FS.

ESG factors are increasingly being incorporated into corporate governance by regulators around the world as well as investors themselves who have made commitments to provide their portfolio exposure to sustainable investments (SRI)⁶.

ESG grew out of investment philosophies clustered around sustainability and, thereafter socially responsible investing. Early efforts focused on “screening out” (that is, excluding) companies portfolio largely due to environmental, social and governance concern, while more recently ESG has favorably distinguished companies that are making positive contribution to elements of ESG, premised on treating environmental and social issues as core element of strategic positioning. While climate figures prominently in ESG discussions there is no single list of ESG goals or examples, and ESG concepts often overlap⁷.

Examination of Corporate Governance reveals a complex array of mechanisms. These mechanism include but are not limited to “board composition” encompassing factors such as diversity, proportion of independent directors, and board structure. Policymaker have made substantial strides in this area, introducing numerous guidelines and regulations to enhance transparency in non- financial reporting (NFR). These guidelines, aimed at disclosing corporate conduct related to ESG themes are driven by commitment to promoting sustainability.

They also aim to issues of relevance, comparability, reliability, and green washing emerging voluntary NFR⁸. The classical exposition of public international law as law governing states presenting in initial jurisdiction problem of legal control of companies in environmental field. This is mainly because companies are traditionally controlled at national, rather than international, level of jurisdiction. Nevertheless, the growing influence of international environmental especially in the respect of environmental principles cannot be denied⁹. Trends in corporate environmental liability and corporate environmental management system makes three fold contributions to the progressive development of environmental law. First they,

⁶ Ibid.

⁷ Mark S. Bergman, Ariel J. Deckelbaum, and Brad S. Karp, *Introduction To ESG*, Harvard Law School Forum on Corporate Governance, August 1, 2020.

⁸ Bruno Buchetti, Francesca Romana Arduino , Salvatore Perdichizzi, *A literature review on corporate governance and ESG research: Emerging trends and future direction*

⁹ David M. Ong, *The Impact of Environmental law in Corporate Governance: International and Comparative Perspectives*, EJIL, 2001

contribute state practice and thus indicate evolution of customary international obligation on these issues. Secondly, they represent an attempt to circumvent legitimacy problem in international environmental law¹⁰ by finding a purchase in company law rather than in environmental law. Finally, by implementing currently non abiding environmental principles and standards, domestic corporate governance regimes may be able to achieve sustainable development objectives that has done so far eluded environmental law¹¹.

The Environmental Protection Act, 1986 protects and improves the environment and empowers authorities to prevent pollution. The Air (Prevention and Control of Pollution), 1961 and the Water (Prevention and Control of Pollution), 1974, focus on controlling air and water polluting through state and central pollution control boards. Hazardous Waste (Management, Handling and Tran boundary Movement, Rules, 2016 set out to safe management, handling, processing, storage and disposal of hazardous waste. Carbon Credit Trading The Scheme, 2023 aims to establish a carbon credits market¹².

UN STATUTES

Paris Agreement Article 6 promotes cooperative mechanisms for emission reduction, involving carbon markets and sustainable economic activity without direct social or governance mandates.

Kyoto protocol, adopted earlier, focused primarily on binding Greenhouse Gas Emission reduction commitment for developed countries with mechanism like Clean Development Mechanisms (CDM).

For many investors climate change possesses the challenges and opportunities, now and in future. The expected transition to a lower carbon economy is estimated to require \$1trillion for investment of a year for foreseeable future generating new investment opportunities¹³. A 2015 study estimates value at risk, as a result of climate change, to the total global stock of manageable asset ranging from \$4.2trillion to \$43trillion between now and at end of the

¹⁰ Bodansky, *The Legitimacy of International Governance: A Coming Challenge for International Environmental law*, American Journal Law

¹¹ Supra Note 8

¹² Anjan Dasgupta, Overview of the ESG framework in India

¹³ International Energy Agency, World Energy Outlook Special Briefing for COP 21, 2015

century¹⁴.

Under the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 some listed entities must have an independent female director. If the Chairperson of the board of listed company is non-executive director and is not a promoter or related to one or a person occupying a management position, one third of the board should consist of independent director.

From FY2022-23, SEBI required some companies to include a business responsibility and sustainability report (BRSR) with their annual report highlighting their ESG initiatives. From FY2023-24, the top 150 listed entities must comply with their nine parameters in the BRSR core framework. Guidelines for ESG rating providers are in the SEBI (Credit Rating Agencies) Regulations, 1999. ESG investment requirements were introduced by SEBI (Mutual Funds) Regulations, 1996¹⁵. The SEBI (Issue and Listing of Non- Convertible Securities) Regulations, 2021 prescribe disclosure under Framework for Acceptance of Green Deposit.

Legal Implication of ESG integration

The Global proliferation of Environmental, Social and Governance (ESG) standards has endangered a complex regulatory landscape, compelling corporations to navigate diverse compliance requirements and multifaceted reporting frameworks. ESG performance has been developed by worldwide standards organizations such as Carbon Disclosure Project (CDP), the Global Reporting Initiatives (GRI), and B Corp accreditation.

Law is not codified for ESG compliance but Securities Exchange Board of India (Listing Obligations and Disclosure Requirements). These standards provide criteria for assessing sustainability and ethical performance, which not only helps organization with their ESG activities but also influences investment decisions. Only way that MSCI's ESG indexes influence capital allocation and corporate behavior is by assisting investors in choosing business that adhere to strict and environmental criteria¹⁶.

¹⁴ The Economic Intelligence Unit, "The Cost of Inaction: Recognizing the Value at Risk from Climate Change", 2015

¹⁵ Ibid

¹⁶ Tanmeet Singh Sachdeva, The Importance of ESG Criteria in Corporate World

Corporate Governance and sustainability serve as pillars of India's economic growth and social progress, promoting ethical conduct, environmental stewardship and inclusive prosperity. Embracing these principles is not only a business imperative but also a moral and strategic imperative for India's sustainable development journey¹⁷.

Various body corporate, limited liability partnership, public and private are taking companies spectrum of initiatives. HDFC bank publishes an insightful report in regard. Since 2014 we have been publishing our ESG report in our Sustainability report following Global Reporting Initiatives (GRI). We also publish an annual Business Responsibility and Sustainability to highlight our performance against principles of National Voluntary Guidelines developed by Indian Ministry of Corporate Affairs (MCA). We participate in various ESG questionnaires and disclosure platform on climate risk which enable benchmarking of Bank's ESG¹⁸.

A recent estimate suggests that "global market for ESG is currently worth about \$200m and could grow to \$500 within five years¹⁹." ESG is influenced by public opinion. ESG issues are inherently reputational, especially given to social events. As more companies provide ESG disclosures and commitments, and given the speed of social media responses and new cycle, observation about a company's ESG action or inactions are often published and sometimes goes viral²⁰.

Corporate governance has long been in focal period for large corporate, listed companies, and regulated entities with numerous studies connecting good corporate governance with higher profitability. However, as the March 2021 effective date of the EU's Sustainability – Related Disclosure Regulation approaches, corporate governance is becoming increasingly important to companies of all sizes²¹.

UK PROVISIONS

The Financial Conduct Authority (FCA) requires UK listed issuers to disclose corporate governance information to ensure transparency and compliance with the UK Corporate

¹⁷ Jyothi G.H., Corporate Governance and Sustainable Development in India – An ESG Perspective, ICSI

¹⁸ HDFC Bank, Environmental, Social Governance report

¹⁹ Supra Note 6.

²⁰ Ibid.

²¹ Elizabeth Robertson, Scott Hopkins and Simon Toms, Sustainability and ESG: *The Governance Factor and what it means for Businesses*, Harvard Law School Forum on Corporate Governance, January 31, 2021

Governance Code. The FCA has published detailed guidance, and issues related to disclosure, such as the structured digital reporting of annual reports and disclosures regarding Long Term Incentive (LTIPs), have been the subject of recent reviews and updates²².

The UK Corporate Governance Code was strengthened in 2018 to promote gender, social and ethnic diversity in U.K. Boardrooms requiring companies to include a separate section in their annual reports describing the boards policy of diversity, including any measurable objectives the board has set and its progress towards meeting those goals²³. In tandem with 2018 Corporate Governance Code, Financial Regulation Council (FRC) also published guidance this included, this included recommendations that companies adopt a voluntary framework for consideration of its environmental impact. Furthermore, FRC encourages the inclusion of climate change mitigation and other ESG matters when establishing company's purpose²⁴.

According to Capterra U.K. Survey 48% of British SME's pursuing environmental, social and governance goals did not know where and how to start. Recent ESG regulatory updates put large corporations and SME's within their supply chains under significant pressure to report sustainability performance²⁵. Combined with SOX compliance in the U.K. financial reporting reform, ESG regulations aims to make businesses more sustainable, responsible and valuable to the communities they serve.

The Climate Change Act of 2008 (CCA) is the core environmental regulation aiming to significantly reduce GHG emissions by 100% of the 1990 level by 2050. This approach also determines carbon budgeting (max amount of emissions in the five year periods) nationwide²⁶.

DENMARK PROVISIONS

Denmark, a global trailblazer in sustainability and good governance, has embedded ESG principles deeply into its national and corporate fabric. As the world's most progressive economies, Denmark is known for its ambitious climate policies, social equality and

²² FCA, Corporate Governance Disclosure by listed issuer, November 2020.

²³ U.K. Corporate Governance Code, 2018, Principles J- L, and Provision 23

²⁴ Kara Anderson, *Integrating Sustainability to U.K. Corporate Governance Code*, January 2023, <https://greenly.earth/en-gb/blog/company-guide/integrating-sustainability-to-the-uk-corporate-governance-code>

²⁵ ESG reporting requirements in U.K.: Comprehensive guide on ESG reporting basics.

²⁶ Ibid.

transparent institutions²⁷.

Denmark ranked fourth on Climate Change Performance Index (CCPI) whilst first three positions remain vacancy persists as prior reports.

The new rules (pursuant to Act No. 480 of May 22 of 2024) in require the sustainability to be accompanied by limited assurance statement issued by an approved “sustainability auditor” elected by company’s general meeting. The act implements the European Union Corporate Sustainability Reporting Directive (CSRD) into Danish law. The purpose of CSRD is to strengthen the legal framework into company’s sustainability reporting. The implementation entails a number of changes to various Danish corporate laws, predominantly the Annual accounts Act²⁸.

A report of CSRD insights into data points of 35 large cap companies. 74% of both physical and transition risks as part of climate scenarios analysis. The mandatory reporting table for GHG emissions does not support clear communication of data to the reader of sustainability statement if one is using table and also use a narrative. Divergence in practice exists for display of data, as different formats of table are used²⁹.

A philosophical lens approach to sustainability, focusing on ESG and the practical implementation of this term. It sets out investigate the shortcomings and strengths of ESG, while also discussing shift in discourse from CSR to ESG.

Denmark V. Global Standards:

The European Union aims to drive sustainable growth by embedding environmental, social and governance principles. Initiatives like the CSRD and EU Taxonomy enhance transparency. They prevent green-washing and guarantee that businesses tackle human rights. These initiatives also focus on environmental impacts and governance standards. As businesses worldwide navigate the growing importance of Environmental, Social, and Governance (ESG) principles, they face evolving laws and regulation. These rules are shaping how companies

²⁷ Tinchichan, Denmark’s ESG blueprint: A Scandinavian Leader in Sustainable Governance, ISESG, <https://www.isesg.org/post/denmark-s-esg-blueprint-a-scandinavian-leader-in-sustainable-governance>

²⁸ Carstedt Rosenberg, *ESG and Sustainability reporting for Danish Companies*, August 2024

²⁹ Deloitte, Sustainability Reporting Benchmarking Insights CSRD insights into 100 ESG data points – reporting by 35 Danish Large Cap Companies – 2024.

operate. They also dictate how organizations report their sustainability efforts. Denmark stands out as global leader in ESG implementation, with its proactive approach exceeding international norms.

As per sustainability reporting, Corporate Sustainability Directive (CSRD): EU-wide directive requiring companies to report on ESG metrics. Sustainability Accounting Standards Board (SASB) and Global Reporting Initiatives – Voluntary global framework for ESG disclosures. CSRD in Denmark applies to broader range of companies including SME's. Danish companies to report social responsibility initiatives³⁰.

As per environmental regulation, Paris agreement is a global commitment to limit global warming to below -2 degree Celsius. Kyoto Protocol targets for reducing greenhouse gas emission.

Danish Climate Act targets a 70% reduction in greenhouse gas emission by 2030 (compared to 1990) levels. Carbon dioxide tax on agriculture is the first global initiative on carbon tax on livestock emission starting in 2030³¹.

As per social responsibility ILO core convention international labor standards focusing on fair wages, safety, and worker rights. Modern Slavery Act (U.K. and Australia) requires businesses to disclose steps taken to prevent modern slavery.

Danish Financial Statements Act encourages transparency in social transparency in social initiatives like diversity, workplace, safety, and local community engagement.

As per voluntary ESG standards, UN Sustainable Development Goals (SDG's) broad framework for sustainable development. Carbon Disclosure Project (CDP) is voluntary disclosures on climate, water, and forests.

Denmark follows EU aligned ESG initiatives but encourages stricter voluntary measures through industry collaborations and public private partnerships.

³⁰ Skale Egenkipital, *Comparing ESG laws: Denmark vs. Global Standards*

³¹ Ibid.

INDIA PROVISIONS

Section 135 of The Companies Act is the pioneering statutory provision mandating CSR spending for companies meeting certain financial thresholds (net-worth, turnover, profit). Corporations are required to allocate at least 2% of their average net profits over the preceding three years towards CSR activities, which primarily address social welfare but also intersect with environmental sustainability. This legal obligation institutionalizes the 'Social' aspect of ESG and compels companies to contribute to societal contributions³².

Laws:

Environmental laws

Corporations in India comply with a suite of environmental statutes, including– The Environmental Protection Act, 1986.

- The Air (Prevention and Control of Pollution) Act, 1981.
- The Water (Prevention and Control of Pollution), Act, 1974.
- Hazardous Waste (Management and Handling) Rules.

Labor and Social welfare Laws

The social dimension of ESG is reinforced by compliance with labor laws such as- The Industrial Disputes Acts, 1947.

- The Payment of Gratuity Act, 1972
- The recently consolidated Labor Codes (e.g. Code on Wages, Occupational Safety, Health and Working Conditions Code)

Governance Laws

- The Companies Act, 2013
- SEBI (Listing Obligations and Disclosure Requirements), 2018
- Business Responsibility and Sustainability Report (BRSR)³³

AI and ESG intersect to possibly emerge as the biggest disruptions to business ever seen, emphasizing the need for operational and business model change.16% CEO's in India (in comparison to 10% of CEO's India in 2023) and 14% CEO's globally consider operational

³² Shobhana Rathore, The Rise of ESG Compliance in India: Legal Obligations for Corporations, LeDroit, July 9, 2025.

³³ Ibid.

issues as the greatest threat to their organizations' growth³⁴.

CONCLUSIONS

ESG has emerged as pivotal determinant for fulfillment of Sustainable Development Goals (SDG) determined by UN to achieve a sustainable future for all by 2030 as the target year. The intricate nexus between corporate governance and ESG and progressive initiatives undertaken by government is for environmental stewardship is highly commendable. Governments worldwide have recognized the necessity of implementing policies and regulatory framework that incentivize and mandates ESG practices subject to some exceptions.

Companies often face legal and regulatory challenges in frequent reform and amendments in laws regarding climate action initiatives where it faces it sometimes feels impasse in balancing profitability while ensuring ESG compliance. Government to ensure a true and fair disclosure of the compliances made by companies and ensuring environmental needs shall provide authorized and accountable statics. Significant resources are required to implement ESG reporting systems conduct audits and adapt businesses processes imposing financial burden especially on smaller companies.

³⁴ KPMG, ESG and Growth Imperative – For Indian Companies.