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GREEN TAXATION IN INDIA: A STEP TOWARDS SUSTAINABLE CORPORATE GOVERNANCE

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ABSTRACT

Corporate Governance is meant to smoothen a company's business operations, serve the interests of its various stakeholders in the best possible way and help it in fulfilling its aims and objectives. Unfortunately, however, these boardroom strategies largely ignore the *environmental interests*, a prime stakeholder in itself and other stakeholders' interests being very much dependent on it. This neglect affects the credibility as well as the profitability of the company in the long run. The shift towards *sustainable corporate governance* (also referred to as, '*Corporate Environmental Governance*') can address this situation as it, *inter alia*, ensures that the *environmental* impact of business operations are taken into account and a balance between *sustainability* and *profitability* is *created* and *maintained* throughout. Different economic instruments, particularly '*Green Taxes*', can pave the way for this transition as they are aimed at making the companies *internalize* the *environmental costs* its business operations and strategies generally generate and which are otherwise borne by *society at large*. These taxes *incentivise environment-friendly* business models and discourage any business module which has a *long-term* and *severely harmful environmental* impact. Simultaneously, they make *consumers* play an important role in *environmental protection* as well as *formation of business strategies* by opting for themselves goods/services of a company, which does *eco-friendly* business.

The present paper assesses the utility of the green *taxation* mechanism in India in making that transition towards '*Sustainable Corporate Governance*' stressing the need for a central legislation on the subject, backed by stronger policies and modern technological as well as educational tools, to make it more effective.

Keywords: Corporate Governance, Corporate Environmental Governance, Sustainable Corporate Governance, Green Taxation Laws

I. INTRODUCTION

'*Rule of Governance*' refers to the set of binding norms/rules/regulations/practices which every organisation needs to govern or regulate the conduct of its daily affairs and successfully attain its objectives. These rules also help it in serving its various stakeholders' (within and without the organisation) interests in the best possible way and with appropriate modifications as per the needs of the hour.

A corporation, a legal form of a group of people it is formed by with its own distinct identity and capacity to hold rights and duties, also requires a similar set of authoritative norms, rules and practices, also known as '*Corporate Governance*', to run its daily operations and meet its objectives. Corporate governance also reflects the underlying organisational culture and values of a corporation and influences the choices of the people it deals with. Therefore, ideally, it must take into account and provide for any harmful impact business operations may have on anything, including the *environment*. However, unfortunately corporations have generally been found undermining environmental concerns and even ignoring their *corporate social responsibility* ("CSR"), which includes *protection and preservation of the environment*,¹ to maximise their profits at all costs. The approach proves to be detrimental to the interest of their multiple stakeholders (viz., consumers, communities, shareholders) their own long-term interests denting their credibility and profitability.

However, a slight change in their strategy has been observed, of late, with a marked shift towards *sustainable/environmental corporate governance* aimed at greening the business operations and strategies. Such a shift signifies their willingness to accommodate environmental concerns as the core of all their operations and strategies. Economic or market-based instruments ("MBIs"), such as *green financing*, *green investment* and *green taxes*, have proved quite useful in making this transition and are being highly recommended nowadays.² This paper, therefore, takes up green taxation (adopted by the countries like the U.K, Australia and India) for discussion to see its utility as an economic instrument to make this shift.

In this paper, *first*, the concept of '*Corporate Governance*' is discussed in order to see the significance assigned to the *environment* as a stakeholder under the *existing model* of corporate

¹ Jennifer Clapp, 'Global Environmental Governance for Corporate Responsibility and Accountability' (2005) 5 GLOBAL ENV. POLITICS 23, 26.

² Don Fullerton et al., 'Environmental Taxes' (National Bureau of Economic Research Working paper No. 14197, 2008) <<http://www.nber.org/papers/w14197>> accessed 23 May 2025.

governance. *Second*, the assessment for any required change in this model is made to know whether the proposed shift would bring the environmental concerns at the forefront of all business strategies. *Third*, it analyses the usefulness of MBIs, particularly ‘*Green Taxes*’, in bringing about this change. Further, it takes stock of green taxation measures in India and explores whether a specific law on the subject, backed up by strong policy measures and technological tools, would make it more effective.

II. CORPORATE GOVERNANCE

‘*Governance*’ is an act of governing or overseeing the control and direction of an organisation or institution.³ In this sense, the term ‘*corporate governance*’ would ideally mean the “act of governing or controlling the functioning of a corporation.” As per the ‘Organisation for Economic Co-operation and Development (“OECD”) Principles on Corporate Governance’, it involves a set of relationships between/among a company’s management, board, shareholders and stakeholders and provides, at the same time, the structure and systems through which the company is directed and its objectives are set. Further, it helps in determining the means of attaining those objectives and monitoring performances.⁴ The United Nations Conference on Trade and Development (“UNCTAD”)⁵, on the other hand, highlights some of the common key features of different definitions (given by various institutions and scholars) such as, control systems within the company, relationships between and among the company’s board/shareholders/stakeholders, management of the company in the all the stakeholders’ interests and ensuring greater transparency and accountability to assure people dealing with the company about the appropriateness of the business-management-methods.

Different guidelines issued on the subject by various governments to ensure good corporate governance with more transparency and disclosure in the conduct of a company’s operations has contributed significantly to the growth and evolution of the concept. Good corporate governance enables a company to create an environment of trust, transparency and accountability, which in turn, promotes long-term capital and supports economic growth and financial stability.⁶

³ ‘Governance’, *Merriam-Webster Dictionary* (Encyclopaedia Britannica, Inc., 2022).

⁴ OECD, ‘G20/OECD Principles of Corporate Governance 2023’, (Paris, 2023) <<https://doi.org/10.1787/ed750b30-en>> accessed 25 May 2025.

⁵ UNCTAD, ‘Selected Issues in Corporate Governance: Regional and Country Experiences’, UNCTAD/ITE/TEB/2003/3, (2003).

⁶ OECD (n 4).

III. SUSTAINABLE/ENVIRONMENTAL CORPORATE GOVERNANCE

The growing reach and clout of the corporations, particularly multi-national and transnational corporations (“MNCs” & “TNCs”), have had quite a significant impact on global environment, with environmental policies and outcomes getting influenced by powerful corporations in the countries, especially those in global south and having a lenient legal framework, poor monitoring and a weak enforcement mechanisms.⁷ Such favourable conditions are the result of a weak state capacity and an urgency to uplift the domestic economy by attracting more and more foreign investments.⁸ The significant environmental impact of business operations (*eg, climate change*) has raised concerns over the existing model of corporate governance calling for appropriate changes therein and making corporations accountable for their environmentally detrimental conduct.⁹ A series of global efforts (for example, *the UN’s Global Compact*,¹⁰ *the OECD’s Guidelines for Multinational Enterprises*,¹¹ *the UNCTAD*¹² as well as calls for an *international treaty on corporate accountability*) has also been there to make corporations shift towards a socially and environmentally accountable governance structure, ie, ‘*sustainable or environmental corporate governance*’. However, the non-binding nature of all these legal instruments, with compliances left to the whims and fancies of these mighty corporations, does not help the situation. Nevertheless, these global efforts have definitely contributed in making corporations commit voluntarily to follow the CSR initiatives.

A. CSR

CSR envisages broader inclusion of various stakeholders (including *the environment*) in business mission statements through measures like management auditing and reporting. The Global Reporting Initiative (“GRI”) was also started with this very objective and is now an independent body working in collaboration with the UN Environment Programme (“UNEP”) as well as the UN on the Global Compact.¹³

Nevertheless, the arguments are out in favour and against the role of such measures in abating

⁷ Clapp (n 1) 23.

⁸ *ibid.*

⁹ J. L. Walls et al., ‘Corporate Governance and Environmental Performance: Is there Really a Link?’ (June 2011) STRATEGIC MANAGE. J., 1, 2-3.

¹⁰ Lise Kingo, ‘The UN Global Compact: Finding Solutions to Global Challenges’ UN CHRONICLE (June 19, 2019) <<https://www.un.org/en/un-chronicle/un-global-compact-finding-solutions-global-challenges#:~:text=The%20UN%20Global%20Compact%20is,the%20implementation%20of%20the%20SDGs>> accessed 23 May 2025.

¹¹ OECD (n 4).

¹² UNCTAD (n 5).

¹³ Clapp (n 1) 26.

corporate environmental harms and ensuring corporate accountability with some scholars pointing out the difference between taking *responsibility* (ie recognizing its role in sustainable development making voluntary and self-regulatory efforts) and feeling *accountable* (ie, assuming legal obligations to promote sustainable development and to provide compensation when such obligations are breached).¹⁴ Despite CSR activities becoming a statutory requirement for corporations in some countries (such as India¹⁵), assessing their real effectiveness remains a difficult task despite some notable corporate initiatives.¹⁶

The absence of a strong regulatory control system and failure of voluntary international or domestic measures such as CSR have, therefore made some countries to opt for MBIs (eg, *taxes, subsidies, tariffs, quotas*)¹⁷ in order to make companies move towards *sustainable corporate governance*.

B. MBI

MBIs are largely being used to encourage sustainable business practices by incentivising the production and use of eco-friendly goods and services and simultaneously disincentivising environmentally harmful practices (eg, *misuse or over-exploitation of certain natural resources*).¹⁸ ‘*Green Tax*’ (also known as ‘*Environmental/Carbon/Eco Tax*’) is one such instrument which is levied on, *inter alia*, harmful environmental emissions.

IV. GREEN TAXATION : A STEP TOWARDS SUSTAINABLE CORPORATE GOVERNANCE

i. Green taxes

‘*Green Tax*’, a kind of *compulsory tax* levied on *polluting substances or factors* (such as *sewage, harmful emissions, noise and waste*) to *maintain ecological order*,¹⁹ helps in internalizing the social costs of environmental pollution and ecological destruction into

¹⁴ *ibid* 26-27.

¹⁵ Companies Act, 2013, s. 135.

¹⁶ Santosh Kumar Tripathi et al., ‘Corporate Social Responsibility in India: A Review of Corporate Contributions to Sustainable Development Goals’ (2024) 30 *EDU. ADMIN. THEO. AND PRAC.* 581, <<https://kuey.net/index.php/kuey/article/view/1508/709>> accessed 11 June 2025 .

¹⁷ Fullerton (n 2).

¹⁸ Hari Srinivas, ‘Economic Instruments for Environmental Policy: Solving Global Environmental Problems with Local Economic Action’, *POLICY ANALYSIS SERIES* (February 2023).

¹⁹ Lei Hua, ‘The Impact of Environmental Taxation on the Structure and Performance of Industrial Symbiosis Networks: An Agent-based Simulation Study’ (2024) 10 *HELIYON*.

production costs and market prices and distribution, thereafter, of natural resources through the market mechanism.²⁰ Although it has different forms, generally, it is either levied as a tax on some environmentally damaging products/activities (For example, 'Excise Tax' on Ozone Depleting Substances ie, ODS) or extended as a tax benefit to some environmentally beneficial products/activities (For example, 'tax credits' for buying electric vehicles ie EVs).²¹ Thus it simultaneously encourages environment-friendly behaviours through economic benefits and discourages environmentally detrimental conducts by penalising them. Further, as a kind of Pigouvian taxes, it helps in reducing pollution, raising additional revenue (in the form of environmental tax receipts, or the proceeds of carbon trading allowances) and development of green technologies.²² The government can use the extra revenue for launching environmental protection initiatives, clean energy projects and other such environmental-damage-mitigating programs.²³

All types of tax systems ('Income Tax', 'Estate Tax', 'Property Tax', or 'Excise Tax') can incorporate environmental tax measures, which can then be enforced at local, state and central levels.²⁴ The step will shift the tax burden from economic functions (such as labour) to the polluting activities, reduce other taxes like those on labour, investment or innovation and eventually lead to tax reforms. Green taxation also supplements the existing regulations filling in any gap left by them.²⁵ Taxes on water pollution, noise and garbage, levied in some developed countries, are examples of green taxes.²⁶

Moreover, green taxes, by raising the prices of goods/services from environmentally non-compliant companies, also discourage consumers from purchasing or using such goods/services and, in turn, force such companies to comply with the regulations. Thus, they make consumers (a key stakeholder in corporate governance) an active participant in making the shift towards sustainable corporate governance.

In short, green taxation creates a win-win situation for one and all- for governments by creating an extra source of revenue, for companies by bringing down their long-term business costs and

²⁰ *ibid.*

²¹ Aiswarya Krishnadas, 'A Step towards Green world: An Analysis of Green Tax', (*Taxscan*, 11 January 2024) < <https://www.taxscan.in/a-step-towards-green-world-an-analysis-of-green-tax/362955/>> accessed 1 June 2025 .

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Hua (n 19).

increasing their profitability, for *consumers* by getting them healthier green products and services, for the *nation* by paving its way to sustainable economic and social growth and for the *planet* itself by subduing the threat to its survival.

This is why many countries in the world have opted for green taxation, with Finland leading the way (by proposing a carbon tax in 1990 itself) and many others (such as Sweden, Denmark, the U.K., the U.S. and India) following it in the subsequent years.²⁷ The initiative has, in fact, worked quite well for them as for example, levying of carbon tax on industries in Denmark and the U.K saw reduced carbon-emissions.²⁸

ii. India

India, while looking for ecologically sustainable means for its unhindered economic growth, found the *near absence* of sustainable corporate environmental governance as a major obstacle. However, luckily, it found the way out in its Constitution²⁹ itself and by using this leeway and judicial backing, it adopted the concept of green taxes, when the states such as Tamil Nadu³⁰ and Bihar³¹ enacted laws to levy green taxes on motor vehicles and Goa³² brought a law to impose green cess on environmentally hazardous products under the Constitutional scheme.³³ Moreover, the 'Clean Energy Cess' (a form of carbon tax) by the Government of India on some items (*coal, peat and lignite*), 'Entry Tax' on vehicles in Himachal Pradesh, taxes levied on old vehicles in six Indian States (including Delhi) for discouraging old vehicles, which also have significant ecological effect, are some other examples of 'Eco Taxes' imposed in India.³⁴ Similarly, the Water Cess Act, 1977 levies cess on industries for consuming water.³⁵ Furthermore, the Forest (Conservation) Act, 1980³⁶ (renamed as the *Van (Sanrakshan Evam Samvardhan) Adhiniyam*, 1980)³⁷, also asks entities, diverting of forest land for non-forest

²⁷ Fullerton (n 2), Aishwarya (n 21), Janet E. Milne, 'Green Taxes and Climate Change: Theory and Reality', CESIFO DICE REPORT (4/2007) <<https://www.ifo.de/DocDL/dicereport407-forum2.pdf>> accessed 30 May 2025.

²⁸ Milne (n 27)

²⁹ Constitution of India, art 245, Sch VII, List II, Entry 6.

³⁰ Tamil Nadu Motor Vehicles Taxation Act, 1974, s 3A.

³¹ Bihar Motor Vehicles Taxation Act, 1994, s 6.

³² Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013.

³³ Radha, Brajesh Kumar, 'Green Tax: A Tool to Contain Corporate Environmental Crime in India' (2024) V(1) CLR 131 <<https://cnlu.ac.in/storage/2025/02/CLR-Vol.-v-Issue-I-2024.pdf>> accessed 5 June 2025.

³⁴ Ibid; Mohanish Verma, 'Environment-driven taxes: An interesting challenge for policymakers' (*Business Standard*, 7 September 2022) <https://www.business-standard.com/article/opinion/environment-driven-taxes-an-interesting-challenge-for-policymakers-122090700709_1.html> accessed 27 May 2025.

³⁵ Ibid; The Water (Prevention and Control of Pollution) Cess Act, 1977, s 3.

³⁶ Forest (Conservation) Act, 1980.

³⁷ Forest (Conservation) Amendment Act, 2023, s 3.

purposes, to pay financial compensation for afforestation in non-forest or degraded land.³⁸

The Indian Judiciary, led by the apex court itself,³⁹ has also lauded and supported such steps. For example, creation of a *Compensatory Afforestation Fund* (“CAF”) in 2002 for the preservation of forests under the Forest (Conservation) Act, 1980 (managed under the *Compensatory Afforestation Fund Act, 2016* (“the CAF Act”)^{40, 41} and introduction of the CNG-based public transport⁴² (exempted from green taxes)⁴³ in India, were possible only due to the Supreme Court’s directions. On the other hand, the High Courts of Madras⁴⁴ and Bombay⁴⁵, by upholding the Constitutional validity of S. 3A of the *Tamil Nadu Motor Vehicle Taxation Act, 1974* and the *Goa Green Cess Act, 2013* respectively, aided the legislative effort to impose environmental taxation. The Himachal Pradesh High Court, in the same vein, recently recommended the State Government to collect ‘*Green Tax*’ from the tourists coming to the State (following the example of Sikkim and Bhutan) to maintain the State’s cleanliness.⁴⁶

iii. Issues and challenges

The green taxation mechanism in India, despite the presence of the aforesaid laws and the judicial activism, is still not as effective as in other countries (discussed earlier) mainly due to being used, by and large, as a policy mechanism. This fragmented approach, in absence of a central legislation on the subject, leads to non-uniformity⁴⁷ in its application and fails to enforce accountability in cases of non-compliance.

iv. Green Taxation Legislation: A Need of the Hour

When used as a policy tool,⁴⁸ green taxation measures lose their effectiveness due to missing

³⁸ Ibid., s. 4(3), Radha (n 33).

³⁹ Shreeja Sen, Mayank Aggarwal, ‘SC Doubles Green Tax on Commercial Vehicles Entering Delhi’, *The Mint* (Delhi, 16 December 2015).

⁴⁰ The Compensatory Afforestation Fund Act, 2016.

⁴¹ *T N Godavarman Thirumalpad v Union of India* (1997) 2 SCC 267.

⁴² *M C Mehta v Union of India* (1998) 8 SCC 648.

⁴³ Radha (n 33).

⁴⁴ *K M Vijayan v State of Tamil Nadu*, AIR 2005 (NOC) 408 (MAD).

⁴⁵ Sharmeen Hakeem, ‘Bombay High Court Upholds Constitutional Validity Of Goa Green Cess Act For Reduction of Carbon Footprint’ (*Live Law*, 21 September 2023) <<https://www.livelaw.in/high-court/bombay-high-court/bombay-high-court-upholds-constitutional-validity-go-a-green-cess-act-carbon-footprint-fee-238346#:~:text=Sharmeen%20Hakim&text=The%20Bombay%20High%20Court%20at,2013%20or%20the%20Green>> accessed 23 May 2025; Radha (n 33).

⁴⁶ Radha (n 33); Unanimous, ‘High Court Suggests Green Tax to Rid Himachal of Waste’, *The Hindustan Times* (Delhi, 26 July 2024) <<https://www.hindustantimes.com/cities/chandigarh-news/high-court-suggests-green-tax-to-rid-himachal-of-waste-101721939554157.html>> accessed 12 June 2025.

⁴⁷ Fullerton (n 2).

⁴⁸ Hua (n 19).

standardized definitions and non-uniform implementations⁴⁹. That's why, India has witnessed varying tax rates in different parts of the country, with Maharashtra having a higher tax rate, U.P. quite a nominal one and some others having no such taxes at all.⁵⁰

However, a central legislation, by the Union Parliament using its residuary legislative powers conferred under Art. 248(2),⁵¹ can correct this anomaly by bringing uniformity and introducing accountability (especially against corporations) for any non-compliance.

v. *Supplementary measures*

At the same time, some *supplementary measures*, such as *stronger policy tools* harmonizing green tax rates for different segments across the country and introducing targeted subsidies for green technologies (eg, *existing tax incentives for EVs and GST benefits for solar panels and renewable energy equipments*), use of *digital tools* for monitoring emissions and automated tax collection systems and launching campaigns for educating citizens and industries about the benefits of green taxation, are also required to complement as well as supplement the law and pave the path for sustainable corporate environmental governance through a multipronged approach.

V. CONCLUSION

Corporate governance provides for the rules and practices required to govern a company to run business operations smoothly and effectively, serve the interests of various stakeholders in the best possible way and successfully achieve the company's objectives. However, the existing model of corporate governance is profit-oriented and undermines environmental interest creating obstacles on the road to sustainable development model. Lenient laws made to favour powerful corporations further aggravate the problem. Therefore, efforts at national and international levels were made to change the way businesses are done and companies were encouraged to shift towards a sustainable corporate governance structure. However, these efforts led only to creation of some 'soft laws' with no binding obligation and accountability against corporations. The impact of CSR, also a result of such global efforts, still remains invisible notwithstanding some notable corporate initiatives.

⁴⁹ Aishwarya (n 21).

⁵⁰ *ibid.*

⁵¹ Constitution of India, art 248(2).

Consequently, quite many countries have opted for MBIs, especially Green Taxation, which pushes companies to internalise the external costs of their polluting activities, borne, otherwise, by the society at large. Some other advantages of green taxes include reduction in industrial pollution, revenue generation for governments, innovation of green technologies, tax reforms and encouraging production as well as consumption of green products and services. However, in India, it remains largely a policy tool which reduces its effectiveness due to absence of standardised definitions and uniform implementation. Hence, this paper recommends a central legislation, backed up by stronger policies, latest technologies and awareness programs for all stakeholders, to remove any uncertainty or ambiguity in existing measures and fix accountability for any violation thereof. It will make corporations shift towards sustainable corporate practices more expeditiously.

Corporations, owing to their importance in the nation's economic development, must realise that they are answerable and liable for their conduct towards all the stakeholders including the environment. Therefore, they hold a duty to put the planet's interests over their business or personal interests and pursue an ecologically sustainable governance and business model.

