

ESG Norms and Sustainable Corporate Governance: Contemporary Challenges in Accountability and Compliance

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Abstract

The notion of Environmental, Social and Governance (ESG) has shifted from its edges into the very heart of today's governance debate. The norms which were once regarded primarily as a voluntary add-on to business models are increasingly emerging as binding business standards to be observed, and finding their way into an expanding network of nationally and trans-nationally enacted regulatory measures. But this development has not been an easy one. Enforcement is continuing to be patchy, and companies' responses are varied from heartfelt transformation to 'impression management'. This paper explores the theoretical framework of ESG in corporate governance, reviews the history of the international and domestic regulatory landscape, and discusses the key issues which impede proper accountability and compliance. It explores the structural shortcomings of existing ESG reporting and disclosure frameworks, the legal nature of any enforcement left to the church, greenwashing, social washing, shareholder primacy and stakeholder-hearing governance frameworks, and the specific vulnerabilities of emerging markets like India in facing this fast changing landscape. The paper proposes a concept of meaningful ESG integration, which would require greater disclosure, a change in how corporate purpose is defined with a view to truly value or interests-based integration, and a more effective judiciary and regulatory framework. Based on a combination of doctrinal analysis, comparative regulatory study and empirical research, the paper suggests that additional disclosure is not sufficient to achieve meaningful integration and that meaningful integration calls for a fundamental reorientation of the corporate purpose, reinforced by robust judicial and regulatory frameworks and independent verification infrastructures. The paper ends with a series of reform suggestions addressed at the regulators, corporate boards, and international standard setters.

Keywords: ESG, Corporate Governance, Sustainability, Accountability, Greenwashing, Disclosure, Compliance

1. Introduction

The world's economic system is right now shifting a stealthy but powerful emphasis on the connection between Business Company and social welfare. For most of the 20th century, the established view of a corporation was that it functions to promote the interests of a narrow interest group by maximizing the value of the shares it holds. Until the 20th century, the prevailing corporate theory was that the purpose of a corporation is to maximize the value of the share held by a small group of shareholders, and that environmental and social issues are seen as compliance worries or public relations concerns. This paradigm is now coming under strain.

It was the United Nations Global Compact (UNGC) which brought the term 'ESG' (Environmental, Social, and Governance) to the main stream of financial conversation in 2004 with its report 'Who Cares Wins' calling on institutional investors to incorporate long-term sustainability factors into capital allocation. In the past 20 years ESG has evolved from being an investment screening element to a focal point for expectations, corporate governance and the design of regulation across the globe.

How did this change come about? There are multiple cross currents in play. These material risks to ecological degradation can no longer be ignored, as evidenced by ecosystems' presence in climate science. Responsible investors must address the material risks of ecological degradation, as evident through ecosystems' presence in climate science. Corporate governance failures, including those at Enron, WorldCom, Wirecard and the Adani group, have graced headlines, reigniting the discussion on board accountability and audit integrity. Board accountability and audit integrity are back on the agenda, following some high-profile corporate governance failures, such as those at Enron, WorldCom, Wirecard and the Adani group. The voices of institutional investors are not the only ones that have been amplified by social movements for racial equity, labor rights, and supply chain transparency. Nowadays, a generation of consumers and employees has come of age, viewing a corporation's ESG activities as a basis for their decisions.

However, the transition from the concept of ESG to a governance framework has revealed a cluster of fundamental paradoxes, which this paper aims to chart and examine. But first, the dilemma of definition: what can be included under ESG is a broad bunch of diverse environmental, social and governance concerns that cannot be homogeneously translated into laws and rules. Second, there is the issue of measurement: with multiple rating agencies, disclosure frameworks, and measures, the same firm can be given vastly different scores by different parties for its ESG. Second, there is the measurement problem that the vast number of rating agencies, disclosure frameworks, and measures create a Tower of Babel where the same company can receive widely varying ESG scores from different agencies. Third, there is an issue of enforcement: voluntary frameworks dominate, and even mandatory disclosure regimes often fail to have verification and sanction mechanisms to prevent that the disclosure is not misleading. Next, there is the issue of jurisdiction; the risks related to ESG are transboundary, with the governance actions being mostly national, leaving regulatory arbitrage opportunities that will only be taken up by the sophisticated players.

This paper has the following structure. Section 2 places ESG in the broader theoretical discussion of what companies do and who their stakeholders are. The next section, Section 3, provides an overview of the changing international and national regulatory environment. Section 4 critically reflects on the accountability and compliance issues at its core. Section 5 discusses particular issues explicitly in terms of regions, particularly India and other emerging economies. Section 6 presents some recommendations for reform and Section 7 summarizes.

2. Theoretical Foundations: Corporate Purpose And Esg

2.1 The Shareholder Primacy Model and Its Limits

The term shareholder primacy was applied to the conventional justification for shareholder primacy based on the nexus-of-contracts theory of the firm, in which shareholders, who are residual claimants to enterprise with marginal risk of loss, have the right to hold corporate managers to account to maximise their return. To sum up this position, Milton Friedman's famous statement that 'the social responsibility of business is to increase its profits' went beyond an empirical fact and turned into a normative statement as well.

The intellectual underpinnings of this model, however, have been dilapidated over time significantly. The theory goes on to assert that markets internalize externalities, but those outside of the shareholders' interests are adequately covered by contractual mechanisms, and that excess adverse effects within the chosen complement of contracts can be rectified by regulation. Over the past centuries, environmental challenges, labour abuses in global supply chains and financial crisis driven by perverse incentives of governance have debanked these assumptions as analytically illegitimate. While the shareholder primacy model shifts actual and tangible costs to workers, communities, future generations and nature, it is an externalization that cannot be seen on the company's balance sheet.

2.2 Stakeholder Theory and the Multi-Constituency Corporation

Edward Freeman's stakeholder theory, developed in the 1980s and developed further through the work of later scholars, is a competing perspective. It argues that corporations live in an ecosystem of relationships, with people, their clients, providers/developers, communities and the natural world; and that the lasting success of the corporation will rely on its relationship to these worlds being managed in an ethical and sustainable way. This theory is NOT ONLY about profitability, it is about profitability being the result of relational sustainability not the precursor to it.

In the last few years, there has been a growth of institutionalization in the stakeholder model. In 2019, nearly two hundred American CEOs signed the Business Roundtable statement on the Purpose of a Corporation, which explicitly rejected the doctrine of shareholder primacy, taking a more inclusive view of the foundations of corporate responsibility. Directors' duties under the Companies Act 2006, section 172, require them to pay special attention to the following concerns: the interests of the business's employees, suppliers, customers, the community and the environment, as they must do to promote the success of the business. The Companies Act, 2013 in the furtherance of concern of the shareholders has provided for the stakeholder in the form of a statutory Company Corporate Social Responsibility (CSR) requirement under Section 135 of the Act.

There are, however, people who are critical of stakeholder theory. According to agency theorists, it induces a diffusion of responsibility: When managers respond to more than one boss, they respond less effectively to them all and hence gives them excuses for their unresponsiveness. Others observe that stakeholder claims are not normally legally enforceable, so that the corporation can claim stakeholder language is valid in legitimating the subordination of non-shareholders.

2.3 ESG as Governance Architecture

What ESG represents may be reconceived as a structured approach to the measurement and disclosure associated with a theory of stakeholders. When companies apply their behavior to ESG factors, the frameworks provide a common framework to help investors, regulators, and the public evaluate how companies behave based on measures outside of the financial world.

The governance aspect of the ESG approach has been never more crucial for corporate law scholars, whom it touches the most directly in their traditional concerns about board composition and independence, executive remuneration, audit quality, anti-corruption compliance, shareholder rights, and transparency. A corporation with bad governance, by approximately everyone's definition, is a corporation with suspect environmental and social commitments, as defined by governance structures, which determine whether stated commitments will be operational.

Conventional financial measures do not account for the intertemporal aspect of corporate accountability, while ESG does. A quarterly earnings announcement is not structured to reveal the growing environmental liability of a mining firm, reputational and legal risks that seep through tier 3 supplier arrangements in a garment company, or productivity costs of the pervasiveness of stress in work over a prolonged period. Where possible, ESG should help to make these risks visible to boards, investors and regulators before they become real crises.

3. The Regulatory Landscape: From Voluntary Norms To Binding Obligations

3.1 International Standard-Setting

The international regulatory architecture for ESG has been built incrementally and, until recently, largely on voluntary foundations. The UN Global Compact (2000), the UN Guiding Principles on Business and Human Rights (2011), the OECD Guidelines for Multinational Enterprises, and the International Labour Organization's core conventions collectively constitute a normative baseline, but they lack direct enforcement mechanisms against corporations.

The most significant developments in recent years have come from the domain of sustainability disclosure. The Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD), established in 2015, developed a widely adopted framework for climate-related risk disclosure organised around four pillars: governance, strategy, risk management, and metrics and targets. Over 3,000 organisations globally had declared support for TCFD recommendations by 2022, and several jurisdictions including the United Kingdom, New Zealand, Japan, and Switzerland have moved to make TCFD-aligned disclosure mandatory.

The International Sustainability Standards Board (ISSB), established under the IFRS Foundation in 2021, represents the most ambitious attempt yet to create a globally consistent set of sustainability reporting standards. Its inaugural standards, IFRS S1 (General Sustainability Disclosures) and IFRS S2 (Climate-related Disclosures), published in 2023, are designed to integrate with financial reporting and to provide investors with consistent, comparable, and decision-useful sustainability information. Whether the ISSB can achieve the global adoption necessary to fulfil its mandate remains to be seen, particularly given the divergent approaches being pursued by the European Union and the United States.

3.2 The European Union: A Mandatory Disclosure Regime

The European Union has taken a most decisive step towards a legally binding, mandatory ESG governance framework. In January 2023, the Corporate Sustainability Reporting Directive (CSRD) came into effect, significantly broadens the scope and rigor for sustainability reporting for EU companies. The CSRD expands the scope of companies that must report to about 50,000, adds a 'double materiality' framework to ensure companies

report not only how they are affected by sustainability risks but also what they do to impact people or planet, and also introduces third-party assurance of sustainability information to the predecessor, the NFRD.

The EU Taxonomy Regulation defines a taxonomy of environmentally sustainable economic activities and the Corporate Sustainability Due Diligence Directive (CS3D, formally adopted in 2024) introduces the general obligation of supply chain due diligence and includes accounting obligations towards directors for the impacts of sustainable finance. The two instruments are the most complete worldwide attempt to make ESG obligations part of the corporate law.

3.3 The United States: A Contested and Evolving Landscape

The United States has been more fragmented, and politically divided. The Securities and Exchange Commission (SEC) recently proposed climate-related disclosure rules in March 2022 that would mandate that companies that are listed on the stock exchange adequately disclose the material climate risks they face, as well as disclose greenhouse gas emissions and governance structures associated with addressing risks to climate change. But it was subjected to strong court challenges and political opposition, and then a significantly more streamlined version was embraced in March, 2024, and further limited by ongoing legal action.

In the U.S., the structural disconnects in ESG governance become apparent: SEC's regulatory powers are based on protection of investors, which necessitates connecting disclosure with financial materiality. Imputative materiality which plays a key role in the European double materiality framework – is not considered in this investor-focused approach. California has since been on its own by enacting its own mandatory climate disclosure law in 2023 that affects companies that do business in the state, not just those incorporated there.

3.4 India: A Developing Regulatory Architecture

Advancements in India's ESG governance model have been achieved through a unique mix of regulatory and market-based measures. In 2021, the Securities and Exchange Board of India (SEBI) had also issued a framework on Business Responsibility and Sustainability Reporting (BRSR) mandating companies listed on the stock exchanges with a market capitalisation of top 1,000 to submit comprehensive reports on sustainable development in their annual reports for F.Y. 2022-23. In 2023, the BRSR core was introduced with third-party assurance for certain key performance indicators, known as the 'key points'. This is a major step in the verification of ESG claims.

The mandatory CSR spending requirements under the Companies Act, 2013, provide complementary governance architecture (Section 135), extended director duties and aspects of related party transactions and audit quality. The NGRBC was revised in 2019 and is a framework of nine principles that can guide responsible business conduct in a way that is consistent with international standards.

India faces regulatory shortcomings in its implementation and a lack of institutions and mechanisms to dependent verification and capacity in the boardroom to actualize the ESG Echnology.

Table 1: Comparative ESG Regulatory Frameworks

Jurisdiction	Key Instrument	Scope	Materiality Approach	Enforcement
European Union	CSRD / CS3D / Taxonomy Regulation	~50,000 companies	Double Materiality	Civil liability; regulatory sanctions
United States	SEC Climate Disclosure Rule (2024)	Listed companies (SEC)	Financial Materiality	SEC enforcement; litigation risk
United Kingdom	TCFD-aligned mandatory reporting	Large companies and listed entities	Financial Materiality	FCA; company law
India	BRSR (SEBI, 2021/2023)	Top 1,000 listed companies	Evolving / hybrid	SEBI enforcement; limited to date
International	ISSB S1/S2	Voluntary adoption by jurisdictions	Financial Materiality (baseline)	Jurisdiction-dependent

4. Contemporary Challenges In Accountability And Compliance

4.1 The Measurement and Standardisation Crisis

This is probably one of the biggest challenges in the world of ESG governance the lack of standards to measure and report performance on ESG. There's a paradox in ESG: the more ratings companies rate ESG, the less we know about ESG.

A study by Berg, Kolbel & Rigobon (2022) in the Review of Finance revealed a 0.54 average correlation for the major rating providers of environmental, social and governance, which is borderline failing in any measurement of the financial world. The differences in divergence are due to: Scope differences (which measures do we compare), Measurement differences (how are the measures measured), and Weighting differences (how are the components of the measure aggregated together). Because of this, a company may be rated highly by one rater and lowly by another, and not because facts and figures are wrongly represented, but merely because it makes different judgments about what is important to assess in sustainability rating.

This "strategic incoherence" is more than investor confusion. It calls into question market-based ESG ratings, offers an incentive for companies to "shop for" favorable ratings, and can mislead capital allocation. In the case of institutional investors and compatible stewardship decisions or the building of an ESG portfolio according to different rating, the overall signal to the corporate managements becomes unclear.

The ISSB's standardisation project attempts to tackle this aspect of the challenge from an investor's perspective, but it does not go to the heart of the issue is financial materiality the right organising principle for ESG disclosure? If the environmental and social considerations are relevant even when they don't have an immediate impact on shareholder value – which has strong ethical foundations and is gaining traction at the legal front in European laws – then a pure investor-driven standard setting process will continue to result in blind spots that ESG was supposed to address.

4.2 Greenwashing and Social Washing: The Integrity Gap

The most palpable accountability gap in the present era of ESG activities is greenwashing when companies make false statements regarding their environment friendly actions or commitments. It is a range of behaviours: claiming environmental credentials when it hasn't been done, selectively sharing good statistics and silent vengeance disclosing poor ones, using imprecise and unquantifiable industry jargon (without support) such as 'sustainable,' 'green,' 'carbon neutral,' 'net zero,' and offsetting emissions with poorer quality carbon credits.

The money is at stake. By 2022, Global ESG-labelled investment products had total assets under management of more than USD 35 billion, which is nothing short of a huge market force to force ESG labels on products and corporate behavior, irrespective of the actual quality of the product or practices. An 'investor' who invests in a "sustainable" fund that nevertheless has a major stake in a fossil fuel enterprise or in an arms manufacturer is systematically deluded; so is the public when a corporation pledges to be 'net-zero' without telling investors how much methane its operations produce, or how many workers are being exploited in its supply chain.

Greenwashing is seeing a crackdown in regulations. The proposed Green Claims Directive (2023) launched by the EU of course forbids generic environmental claims without life-cycle analysis and will ban sustainability claims which are not recognised through an approved certificate. The European Securities and Markets Authority (ESMA) and national financial regulators have been looking into and fining asset managers' ESG misrepresentation. Enforcement actions brought by the SEC against investment advisers for materially false ESG disclosures in the United States, and toughened disclosures for ESG labelling.

They define "social washing" as misrepresentation of labour practices, diversity results, community effect or human rights performance, which is analytically analogous to greenwashing but is comparatively less legislatively attended. The range of differences is wide: supply chain violations of labor rights, discriminatory workplace practices, and fabricated diversity data have potential to cause material damage, but data measurement and verification capabilities on social indicators are less well established and oversight more diffuse than those of environmental indicators.

4.3 Enforcement Deficits and the Limits of Voluntary Compliance

In places where companies are required to disclose on ESG issues, enforcement may not be robust enough to prevent companies from ignoring or being misled by sophisticated attempts at greenwashing. There are some structural weaknesses that can be pointed out.

Firstly, disclosure requirements are limited in their nature: they are not verified. Even self stated information with board certification has selection bias, methodological manipulation and outright errors. The mandatory third-party assurance requirement in the CSRD overcomes this issue for companies in the EU that report under the CSRD, though standards for sustainability information are considerably less advanced than for financial information. Ambiguities, lack of consistent methodologies and unreliable scope 3 data provide an environment all auditors applying sustainability assurance need to navigate, which does not exist in financial statement audit.

Second, it is still relatively unexplored whether there is any kind of legal duty to have a misstatement in a scenario outside of securities law. Directors' duties in most jurisdictions fail to specifically refer to ESG obligations and the scope of general fiduciary law to ESG failures is debatable. Where liability is based on securities disclosure duties, there are scienter provisions and materiality requirements that may not readily be met if the failure was due to sloppy methodologies and not fraud.

Third, there has been an increase of both shareholder litigation and investor activism for private enforcement, while these methods are structurally constrained. Class actions and derivative suits based on ESG misrepresentation are fraught with many procedural obstacles in most jurisdictions. Although such claims have given rise to remarkable victories in a few jurisdictions, legal systems respond wildly to them, for example the 2021 Hague District Court case between Milieudefensie and Shell.

Fourth, the cooperation between enforcement bodies is at its first steps on the international level. The risks of environmental, social and governance (ESG) are naturally transboundary, whereas regulatory jurisdictions are not. A corporation domiciled in one jurisdiction, listed in another and with operations in another jurisdiction, may be able to operate these ESG obligations with regulators from a position of regulatory arbitrage that would not be available in for example tax and competition law, where information sharing and mutual recognition obligations are a lot better developed.

4.4 Board Accountability and the Governance Dimension

Corporate governance theory gives the boards of directors the primary role in governing corporate strategy, risk management, holding management responsible. Hence, how boards effectively implement their ESG oversight functions is key to the effective incorporation of ESG into company administration and governance.

There is evidence that board environmental, social and governance (ESG) oversight is superficial in many corporations. Research of boards and CEO action based on survey data consistently shows that, despite the overwhelming number of large company boards that claim to 'consider' issues related to environmental, social, and governance (ESG), a far smaller fraction explicitly allocate ESG responsibilities to particular board committees, performance-related executive compensation to ESG metrics, or invest in sustainability expertise for the boards to fulfill oversight of these and other ESG issues. Standalone 'sustainability committees', whose membership do not overlap with existing 'audit', 'remuneration' or 'nominations' committees, where the classical role of accountability is played, may indicate the fact that there is not an integration of ESG.

Executive remuneration design is a telling litmus test of true ESG commitment. If then the compensation model is only based on short-term returns figures without any filters on ESG, the long-term sustainability commitment is undercut by the compensation model that actually dictates managerial actions. The increasing trend of connecting one measure of variable compensation to one E-S-G factor is a positive move, but has its own set of problems: which factor to pick, the risk of too many KPIs and a diffusion of responsibility, and the ability to set targets too low to be effective as a catalyst for behaviour.

4.5 Supply Chain Accountability and the Scope of Corporate Responsibility

One of the most contested frontiers in ESG governance is the extent to which corporations bear responsibility for the environmental and human rights conduct of their suppliers, sub-contractors, and investee companies. This question is central to any meaningful account of ESG accountability because the most severe environmental and social impacts of global value chains often occur several tiers removed from the brand-owning corporation that presents a polished ESG face to investors and consumers.

The EU's Corporate Sustainability Due Diligence Directive (CS3D), adopted in 2024, takes a direct answer to this question: large companies must identify, prevent, and mitigate adverse human rights and environmental impacts in their own operations and those of their upstream and, for certain sectors, downstream business partners. Failure to comply attracts civil liability and administrative sanctions. This represents a significant extension of corporate legal responsibility beyond the corporate entity itself.

There are multiple arguments against a requirement for supply chain due diligence obligations. The extent of leverage and influence that large brands can have over their upstream suppliers, especially in agricultural and manufacturing commodity chains may be inadequate to induce the behavior modifications needed. Requirements for due diligence may have exorbitant compliance costs that could lead to greater concentration in the supply chains of bigger and more prominent suppliers at the expense of workers who are most likely to be in the most vulnerable informal or not regulated positions. Indeed, 'best efforts' due diligence as a legal obligation, may in practice be fulfilled by audits and certifications that record process compliance in the absence of substantive improvement in impact.

Such arguments do not go against the supply chain accountabilities but are expressions that call for a more intricate design. Otherwise, the idea of having a "proper" supply chain without a legal liability on the part of the brand owner and that always allows the brand to profit from the arrangement is not well supported normatively and is no longer sustainable in the regulatory landscape that is emerging.

4.6 The Shareholder Activism Dimension

The rise of institutional investor activism has become one of the key levers to spur ESG governance improvements for listed companies. The major role played by asset managers and their voting and engagement ability to push boards to improve their ESG performance is a potentially strong accountability mechanism: a market-based one.

Yet, there are significant limits to the effectiveness and legitimacy of shareholder activism in favour of ESG. First, the 'Big Three' asset managers who exercise this power the most prominently are subject of their own structural conflict of interest as their business relationships with the companies in which they invest may dampen the force of their efforts. Second, 'universal ownership' theory that suggests there is an alignment of incentives to systemic sustainability for large shareholder diversified owners as they bear the macro-economic costs of failure in ESG, is still more aspiration than demonstrated in practice. Third, market pressures and politics against ESG have led some big institutional investors to tone down their public ESG commitment, and strategies to restrict public pension fund managers from taking an ESG approach have been introduced in various state legislatures in the U.S. raising doubts about how effective market pressures will be.

5. Emerging Economy Challenges: The Case Of India

5.1 Structural Context

As a different dimension, the challenges of ESG governance in emerging economies present new characteristics given varying degrees of institutional capacity, regulatory bandwidth and corporate governance maturity compared to what was assumed in the frameworks intended to mainly capture conditions in developed market settings. India is an excellent example of the opportunities and tensions inherent in ESG governance in large and fast-growing economies that suffer from high socioeconomic disparities, divided federal systems, and a diverse corporate sector from world-class multinationals to micro, small and medium enterprises (MSMEs) in the informal sector.

The presence of India in global value chains as a major exporter of manufacturing and services and a major target of foreign direct investment, requires that India's performance in environmental, social, or governance (ESG) governance is subjected to external overview by international investors, regulators, and civil society. The BRSR framework and the SEBI-regulated push for ESG assurance are indicative of regulators' ambitions to harmonise the Indian corporate governance standards with the international sustainability expectations. But, however, there is a huge gap between the intentions of regulators and reality.

5.2 Specific Challenges

Much of Indian industry does not have the data infrastructure which would make credible ESG reporting possible. Even with listed companies with complex financial reporting systems, measurability of Scope 3 emissions, traceability of supply chain and understanding the granular social data are challenging, and often unfeasible with the micro and micro-small enterprises that make up most of the supply chains. Reporting Scope 3 emissions will require an investment in data infrastructure, supplier interaction and other elements that many companies are not currently able to put in and aren't incentivized to do so.

The regulatory measures to date have been primarily in listed companies and the majority of India's economic activity takes place in unlisted companies and in the informal sector, which are largely absent in the ESG accountability regime. Even well-intentioned and accurate ESG disclosure by large listed companies does not necessarily lead to a systemic improvement if ESG issues are not being tackled in the business models of companies in their value chains.

There's also the 'green transition challenge' one distinct from that of developed economies – exercise plaguing India. Under the circumstances of energy poverty and the need to industrialise, India's path to sustainability is not the same as that which could be followed by countries that industrialised under a different energy regime. ESG frameworks that disadvantage or disincentive companies from making decisions where they offer greater value to society but at a cost, when the sustainability compliance infrastructure is lacking, rather than when there is a decision where the company provides less value to society but more profit.

5.3 SEBI's BRSR Framework: Promise and Limitations

SEBI's BRSR is a huge regulatory step in the Indian ESG governance landscape. It has introduced a 'comply or explain' format on each 'core' ESG KPI; mandatory limited third party assurance requirement; and alignment with the NGRBC principles are collectively a very positive step over the previous Business Responsibility Report (BRR) framework.

Several caveats should be noted: The BRSR questionnaire-based framework is comprehensive in nature but can make the reporting more a "box-checking exercise" than meaningful for boards and investors: businesses can spend too much effort on simply ticking boxes and filling out the form rather than engaging in the deeper

analysis needed to make ESG reporting valuable. The assurance program, which covers only a portion of the KPIs at the moment for the top 150 companies, is an important precedent, and will have to be gradually expanded—a critical step that will be the only way to do so and offer credible verification of the overall ESG picture. Further, the enforcement action by SEBI on BRSR compliance or misstatement to date is quite limited, which emphasizes the under-developed and lessened reputational & legal push towards substantive compliance.

6. Conclusion

ESG norms in corporate governance are not superficial or fashion trends, and are certainly not singular solutions to environmental and social problems of corporations. A complex, problematic and far reaching one is reshaping the accountability of corporates to the society in which they exist and which is ongoing.

This paper has suggested that overall, the presently forthcoming ESG discourse and regulatory enthusiasm have failed to keep up with the verification, enforcement, and accountability mechanisms required to reinforce stated intentions with tangible results in environmental and social outcomes, representing a structural accountability gap in the ESG's governance. All these will have to happen at different levels at the same time: in the standardisation of the global disclosure architectures, in the reinforcement of the responsibilities of the directors, as well as in the increase in third-party assurance processes, in the dissuasion of greenwashing in law and in the adaptation of international standards to the realities of emerging economies.

The risk to failures is great. The act of capital misallocation due to insufficient ESG data does not translate into the most needed companies, sectors and technologies in order to accomplish the sustainability transition. As a result of weak enforcement, there is risk of corporate greenwashing that erodes public trust, the basis of legitimate market institutions. But governance deficits, which stem from the lack of ESG responsibility, continue to burden workers, communities and the environment managing on their own, outside the corporate boardroom and stock exchanges.

The law has a unique role to play in this field. Not merely as a set of requirements, grudgingly fulfilled by corporations, but as a set of obligations, readily observed and legitimately enforced; as a set of standards, defining what companies owe to the societies where they function, how that can be shown and what the consequences are if they fail to do so. It is a task for legislators, regulators and courts in the coming years, but one in which scholarship in this area has an opportunity and a duty to play a role.

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