



The Corporate Law in India Regarding Environmental, Social, And Governance (ESG)

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Abstract

Regional legislation may be complex and lead to a patchwork of solutions, companies have many legal and ethical challenges when trying to achieve ESG goals. This is especially true in healthcare, where strong ethics are vital. Companies operating under different regulations may benefit from a more progressive outlook if the complexities of these legal and ethical issues were well understood. This article delves at the ways in which operational efficiency, brand value, risk management, and ESG performance affect company competitiveness. By examining tactics linked to environmental management, ethical behaviors, and corporate management, it suggests realistic ways to enhance ESG performance. A company's market competitive advantage and capital expenses are both boosted by solid ESG performance. In order to promote sustainable growth in the face of global competition, the research offers strategic advice to corporate management based on the ESG approach. When compared to other nations, India's efforts to regulate ESG reporting are more beneficial, according to the BRSR framework that the country introduced. Directors in India are legally obligated to fulfill their responsibilities to different stakeholders, which establishes a solid basis for fair and efficient corporate governance. As a result, Indian corporations are more likely to make ESG disclosures, and there is more space for regulatory and legislative changes. While nations such as the United States and the United Kingdom include environmental, social, and governance (ESG) disclosures into their yearly reporting processes, authorities have not mandated a specific or consistent reporting structure or methodology. In an effort to shed light on pressing issues in ESG and corporate governance, this study seeks to set a new course for scholars interested in corporate law and governance.

Keywords: ESG compliance, corporate governance, sustainability, ethical business practices, regulatory framework

Introduction

When we talk about ESG metrics, which stand for "environmental," "social," and "governance," we're talking to a broad range of indicators that include aspects beyond just financial performance. Here we have the first of a planned series that will describe its current condition.

The mandates for ESG may be found in the many legislations and regulations that control companies. In cases when ESG does not fit neatly into these categories, it may be necessary to include it into a contract as a condition of doing business or as a result of an agreement between the parties. Among them, you may find anti-bribery legislation passed in 2010 and the EU's General Data Protection Regulation US Foreign Corrupt Practices Act of 1997.

"ESG" has become a cliché. If you want a better grasp of the word, here are the specifics. Various legislation and laws pertaining to environmental standards need compliance on

the part of entities. Authorities are given the authority to prevent pollution and safeguard and develop the environment under the Environment Protection Act, 1986. State and federal pollution control boards are responsible for preventing and regulating air and water pollution, respectively, according to two statutes enacted in 1974 and 1981, respectively, that aim to prevent and control pollution in the air and water, respectively. The 2016 Hazardous Waste (Management, Handling and Transboundary Movement) Rules outlined the regulations for the correct handling, processing, storage, disposal, and management of hazardous waste. The goal of the Carbon Credit Trading Scheme, 2023 is to create a market for carbon credits.

Benefits for workers and employees, such as provident funds, bonuses and gratuities, safe working conditions, sick leave, working hours, and maternity leave, are protected by many legislations. There are now four codes that include the

government's 29 labor legislation. Wages and bonus payments are governed by the Code on Wages, 2019, which also guarantees equitable compensation. Businesses that fall under certain categories will have their working conditions governed by the 2020 Code on Occupational Safety and Health. Nine statutes pertaining to social security and maternity benefits have been consolidated into the Code on Social Security, 2020. By lightening the load that companies have to bear in terms of labor compliance, the Code on Industrial Relations, 2020 hopes to enhance the business climate. The codes are ready to be executed. Also pending rules and instructions is an Act to Secure Individuals' Digital Data from 2023, which laid the groundwork for data protection.

The provisions of SEC, the Anti-Money Laundering Act of 2002, the Anti-Corruption Act of 1988, and the Companies Act of 2013 (the companies act) are among those that govern corporate governance.

The businesses act mandates that the board's report must address energy saving, specify the representation of women on the board, and, in accordance with section 166, describe the directors' initiatives to protect the environment. The Business Organizations Act and the Business Organizations (Corporate Social Responsibility Policy) Rules, 2014 both require compliance with CSR rules.

Literature Review

Panha Vorng *et al.* (2024) ^[1] The integration of sustainability into corporate practices and legal frameworks has significantly changed, particularly in developing countries and Europe. ESG criteria, which include environmental, social, and governance, are becoming major factors affecting economic resilience and investment objectives. Legislative efforts are being made to encourage Corporate Environmental Responsibility (CER) through reporting requirements, corporate liability regulations, and voluntary initiatives. Research suggests that developing countries should prioritize social and environmental sustainability in governance, and that CSR and ESG work together to highlight this relevance. Sectors like water management also need to incorporate ESG criteria. The introduction of ESG elements into corporate finance is reshaping investment decisions, emphasizing the need to fully understand their consequences for sustainable development.

Hirdayu Radzi *et al.* (2023) ^[2] Capitalists are increasingly interested in sustainable investments due to climate change concerns and the growing interest in sustainability reporting for company performance. This research examines the environmental, social, and governance (ESG) literature and its relevance to a company's performance. ESG pillars include governance, society, and the environment. Companies that prioritize ESG are considered ethical, well-managed, and future-proof. The Malaysian government offers tax breaks to businesses that prioritize ESG. Adopting ESG can improve reputation, risk management, innovation, and contribute to a more sustainable society. This conceptual paper provides a synopsis of existing research on ESG factors and their impact on company ROI. By adopting ESG, companies can reap benefits beyond financial gain, such as improved reputation, risk management, innovation, and contributing to a more sustainable society.

Victoria Agbakwuru *et al.* (2024) ^[3] This research explores the relationship between environmental, social, and governance (ESG) factors and corporate financial success. Regulatory agencies and other stakeholders are pushing for more openness from businesses, leading to more ESG measures being included in corporate reports. The study uses a mixed-methods strategy, combining quantitative financial data from ESG reporting companies with qualitative observations from professionals in the field. It assesses key performance indicators (KPIs) including stock price volatility, profits made from assets (ROA), and profits made from equity (ROE). The research also explores how ESG ratings affect investors' choices and emphasizes the importance of incorporating sustainable practices into corporate strategy. The data suggests that comprehensive ESG reporting correlates positively with long-term financial performance, including capital expenditures, reputation, and stakeholder relations. However, the benefits vary across sectors and depend on the effectiveness of ESG implementation. This study contributes to the growing body of research on sustainable business practices, providing valuable insights for investors and executives seeking a balance between societal good and profit.

Siti Nur Aqilah Ab Wahab *et al.* (2024) ^[4] The Sustainable Development Goals (SDGs) aim to create a better world by 2030 by addressing hunger, inequality, climate change, environmental degradation, and injustice. This research aims to examine the correlation between sustainability performance and corporate governance processes in ASEAN-listed firms and the threshold impact of corporate strategy on sustainability. The study sample consists of 118 enterprises from ASEAN-5 nations from 2011-2020. Results show that corporate sustainability is positively impacted by the presence of female directors and independent directors on ASEAN boards. The research also highlights that low incorporation of business strategy into a company's ESG score can increase the link between sustainability and corporate governance. The findings can guide ESG-conscious capital expenditure decisions and presentations for enterprises, financial backers, and governmental bodies.

Noor Hidayah Ab Aziz *et al.* (2023) ^[5] This review explores the impact of ESG on Corporate Governance (CG) in today's world, where organizations must balance operational success with ethical and environmental responsibilities. The PRISMA framework was used to analyze existing literature, focusing on ESG factors and their connection to corporate governance. The study found that ESG factors significantly influence companies' policies, strategies, and board composition. Thirty publications were identified, forming the final data. The study highlights the importance of CG integration with ESG, provides a research framework, and opens a new field of study on CG and ESG. Incorporating CG on ESG principles enhances a company's long-term viability and stakeholder satisfaction. The evaluation also helps identify information gaps, which is beneficial for current and future studies and policy decisions.

ESG and the LAW

There has been a recent uptick in the use of laws, regulations, and standards to promote ESG. Both domestically and abroad, ESG is coming under closer scrutiny from regulators, and laws and regulations are being

used more often to promote ESG goals. At least 27 nations have enacted domestic legislation establishing economy-wide net zero pledges, and there are already more than 5,000 climate laws and policies worldwide, according to research by the London School of Economics (LSE). Various trade and investment agreements throughout the world have recently included ESG-focused provisions, which range in quality and breadth. Regulators from throughout the world are also vying for the authority to oversee governance, society, and the environment (ESG) factors.

From disclosure regimes to supply chain due diligence regimes, several forms of ESG-focused legislation and regulation are surfacing at the national level. More and more countries are passing legislation that makes it illegal for businesses to conceal data on the company's supplier networks include human rights breaches. A number of statutes deal with general human rights concerns (such as slavery), while others zero in on particular industries (like the extractive sector). Three examples are the British Modern Slavery Act of 2015, Norwegian Transparency Act of 2021, Section 1502 of the Dodd-Frank Act, EU Corporate Sustainability Reporting Directive, EU Disclosure of Non-Financial Information Directive, and Britain's Modern Slavery Bill of 2018 in Australia. Additionally, lawmakers are passing due diligence laws that would force businesses to do due diligence. A few examples include the Child Labor Due Diligence Bill in the Netherlands, the Supply Chain Due Diligence Act in Germany (2021), and the European Regulation 2017/821. The proposed "Directive on The European Commission has given its approval to "Corporate Sustainability Due Diligence." on February 23, 2022. If the Draft Directive is approved, it will be the first regional liability scheme that requires firms in the European Union and some other countries to safeguard people and the environment from harm caused by their worldwide supply networks.

Various other types of rules and legislation pertaining to ESG are also cropping up. In response to rising concerns with greenwashing, the European Union released a draft Directive on Green Claims on March 22, 2023. New regulations on the proof that businesses must provide to back up their environmental claims are suggested in the Draft Directive. The regulations also provide that any environmentally friendly claims must be independently checked and approved by an authority before they can be advertised. Notably, the plan recognizes the right of interested parties, including consumer collectives, to sue merchants for wrongdoing.

Environmental, Social, and governance (ESG) in India The Pillars of ESG

The environmental criteria, or "E," in ESG, include a company's energy use, trash production, resource needs, and any resulting impacts on living things. The environment has an impact on and an effect on any company that uses resources and energy. The environmental factors that are considered include the company's ability to withstand physical climate-related risks, how well management takes care of nonrenewable resources, and the quantity of toxic gasses emitted, both directly and indirectly.

The Importance Of "E" In ESG

The many aspects of ESG work together, and it is essential to one's company practices as a whole. When companies want to be sustainable and follow environmental regulations, there may be overlap between social standards and environmental requirements and governance. Even if environmental and social issues are getting much of the spotlight, no leader is naive enough to think that government cannot be compartmentalized. It is true that good leadership requires familiarity with both the text and the intent of the legislation. Instead of officially reporting findings and hoping for the best, one strategy is to be as transparent as possible and communicate openly with authorities in order to head off any infractions. The environmental factor in the ESG formula is often the center of attention, and rightfully so. Putting a lack of respect for the environment aside, environmental problems pose the greatest threat to companies. The World Economic Forum's most recent Risk Reports rank environmental concerns among the top five threats, with climate change looming large in 2022. A corporation's normal activities are immediately impacted by these hazards. Corporations should take steps to reduce their environmental effect because they face the prospect of more unpredictable environmental disasters, such as shortages in supplies, damage to property, and public outcry, in the future. Foresightful companies are starting sustainability makeovers that reinvent their business strategy and place them in the lead because of the opportunities to react to changing laws, demographics, and investment priorities.

Companies now have a responsibility to promote environmental preservation, peace, and progress since they are the keepers of jobs and food, the engines behind big campaigns and movements, and have a strong public and internet presence. Companies should encourage healthy, environmentally conscious habits in the workplace so that workers may carry these values into their own lives. Proliferation of environmental activism and policies may be achieved via the promotion of an eco-centric mindset and way of life.

ESG In India – Need for A Uniform Code

In recent years, the acronym "ESG"-for "environment," "social," and "governance"-has become more popular in India. A growing number of nations have passed legislation to address the pressing need for businesses and investors to do the same in response to stringent environmental regulations. The government of India has taken swift action to ensure conformity with global ESG standards and has also introduced legislative steps to tackle the issue.

When it comes to environmental standards that must be met under ESG, businesses and organizations must think about things like energy use, conservation of natural resources, climate policy, and so on. While there are several laws in place to protect the environment, none of them require businesses to follow the rules or hold them directly responsible for violations that happen while they're carrying out their operations. There is an urgent need to establish a code that addresses ESG issues specifically and to establish a reliable system to enforce the requirements of this code and associated laws. Even though there are a lot of rules and

regulations that listing businesses are supposed to follow, the burden of enforcement is not on these organizations and they usually get away with a small punishment if they break the rules.

Organizational energy consumption, waste disposal methods, resource utilization, disclosure requirements, and compliance with Indian environmental laws are the main environmental criteria under the current ESG regime in India. As a signatory to the COP26 declaration, India is under additional pressure to pass legislation and policies that address this issue, which is in keeping with the internationally promoted Sustainable Development Goals (SDG), which call on nations to implement stronger environmental protection measures and sustainability objectives.

Present Legislations Governing Environmental Norms Under ESG

Companies in India are now faced with a number of laws that make it their responsibility to establish policies and adhere to standards regarding environmental rules. A large portion of the environmental standards outlined by ESG in India are codified in statutes such as a number of statutes, including the Factories Act of 1948, the Environment Protection Act of 1986, the Air (Prevention and Control of Pollution) Act of 1981, the Water (Prevention and Control of Pollution) Act, 1974, the Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2016, and the Companies Act, 2013.

Rules regarding the management of e-waste, biomedical waste, hazardous waste, battery disposal, and so on have been laid down by laws for example, the Water and Air Acts, 1986; the Environment (Protection) Act, 1986 and 1974, respectively; and the Factories Act, 1948. In addition, businesses are specifically obligated to avoid, manage, and abate contamination of both water and air according to the Water and Air Acts. In order to make sure that the institution follows all the environmental standards, the Environmental Protection Act also mandates the idea of an Environmental Impact Assessment (EIA) to be conducted mostly before a project. In addition, sectors that have not yet conducted EIAs are obligated by the law to do so in order to meet the current standards.

Presence of Business Reporting & Sustainability Reporting Standards (BRSR)

Although there are now business and sustainability reporting rules that listed firms must meet, none of the stakeholders must comply with the law in this regard. It is now mandatory for companies to provide their statistics on energy use, emissions, water usage, waste management, and disposal, according to the BRSR standards that are tailored to environmental disclosure. The current system is a good start, but Plenty of space for growth remains in terms of preventing greenwashing. Proactive steps should be made to establish a strong code with adequate enforcement mechanisms.

Environmental Impact of ESG in India

Although ESG was first proposed in the first part of this decade, it was only relevant to a small number of listed firms at the time. However, there is still a gap in its

implementation and overall management. Both the SEBI and the Companies Act have requested stricter enforcement of compliances and disclosures within the scope of the existing ESG standards, but there is still a lack of effort in this area.

Corporate LAW

The corpus of laws that regulate the rights, interactions, and actions of individuals, organizations, and corporations is called corporate law, enterprise law, or company law. The theory and practice of corporate law are included under this umbrella term. Matters pertaining to the life-cycle of a company are often referred to as corporate law. Thus, it includes everything from the establishment of a company until its dissolution.

Share ownership, capital market regulations, and company culture norms are all microcosms of corporate governance, which varies from one jurisdiction to the next. Despite these differences, many nations face comparable legal traits and issues. Relationships between businesses, their investors, shareholders, directors, workers, creditors, and other interested parties including customers, neighbors, and the environment are governed by corporate law. Although corporation law is more often understood as "company law" or "business law," the former generally encompasses a broader understanding of commercial law-that is, the law pertaining to commercial and business-related objectives and activities-than the latter. Issues of financial law and corporate governance may fall under this category. When used interchangeably with "corporation law," "business law" refers to the body of legislation that governs commercial entities, including but not limited to government registration, capital creation, and other related processes.

There are five legal traits that all businesses have, according to academics. Let me tell you

- The corporation's distinct legal identity allows it to behave similarly to an individual in relation to tort and contract law.
- A shareholder's individual responsibility is capped at the amount their stock in the company is worth.
- (Shares that may be transferred are listed and sold publicly if the firm is considered a "public company").
- The responsibility for running the day-to-day business of the firm to executives via delegated management within a board structure.

Corporate LAW of ESG

The objective was to demonstrate that considering these factors is not only morally sound, but also financially advantageous. Based on the findings, a The degree to which a company's ESG performance influences its risk and return. Thus, ethical and long-term investing began. In the time after, ESG went beyond being a set of voluntary principles and became an essential framework for assessing the risk and sustainability of companies.

The Rise of Anti-ESG Laws And Regulations

Additionally, the anti-ESG movement is capitalizing on the legislation, particularly in the US. In the years after 2021, many notable states enacted laws that discourage ESG-based investing strategies. For instance, in February 2023,

the Indiana state legislature passed "Pension investments" (House Bill 1008).

The Courts, the Law and ESG

Both advocates and detractors of ESG are increasingly using the court as a stage. Foreign and local ESG-related lawsuits have recently surged. The London School of Economics (LSE) predicted that in 2021, there were over 400 climate lawsuits around the globe. A variety of legal theories may give rise to new claims, including as tort law, the theory of deception (greenwashing), the liability of parent firms and others in the supply chain, and comparable behaviors.

Conclusion

Corporate law and sustainability are crucial in today's business landscape, with ESG considerations making waves in the realm of law. ESG factors encompass factors related to the environment, society, and corporate leadership, aiming to increase their beneficial effect on the planet. ESG organizations help businesses make better decisions, with directors and officers having responsibilities and risks associated with ESG. As a key component of stakeholder capitalism, ESG helps put shareholders first. Sustainable investing relies heavily on ESG rules, which address environmental, social, and governance concerns. ESG rules facilitate the expansion of businesses and help identify, prioritize, organize, analyze, and guide various company risks. This can lead to significant progress and development. ESG variables are changing the face of contemporary finance and corporate governance with their complex and ever-changing concerns. More study is needed to understand ESG integration's current state and future direction, obstacles, and possibilities, especially in developing economies like India. Potential areas for further study include how technology can improve ESG integration, how changes to regulations affect business practices and market forces, and the long-term effects of ESG integration on sustainable development and inclusive growth. From an ESG perspective, environmental and social issues are playing a bigger role in shaping how businesses are structured, run, and altered. Businesses should be more open and accountable in their dealings with customers, adopting best practices when communicating important information. Following best practices and prioritizing the inclusion of pertinent information can help reduce risks, legal duties, enhance reputation, and promote sustainable development.

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