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Rethinking ESG Disclosure and Board Accountability: Multidisciplinary Responses to Greenwashing and Governance Failures in India, the EU, and the UK.

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Abstract
Over the past twenty years, Environmental, Social, and Governance (ESG) factors have transitioned from a specialized idea in responsible investing to a standard requirement for companies across the globe. This shift is driven by the idea that if businesses are required to report on their environmental impact, how they treat their workers, and how well they manage their internal systems in a clear and verifiable way, investors and regulators can more effectively support ethical companies and challenge those that do not meet these standards .
However, in practice, the requirement to disclose ESG information has led to a major issue. Greenwashing—the act of presenting an exaggerated or inaccurate image of a company's sustainability efforts—has become more common as regulatory efforts to stop it have expanded. Companies in Europe, Asia, and elsewhere still issue reports that claim they are more environmentally and socially responsible than their actual practices show. The internal systems meant to detect such issues have not kept up.
This paper explores why this is happening. By comparing ESG regulations in India (Business Responsibility and Sustainability Reporting—BRSR), the European Union (Corporate Sustainability Reporting Directive—CSRD), and the United Kingdom (TCFD-aligned governance codes and the Corporate Governance Code), the paper argues that independent directors—those formally responsible for corporate governance at the top of companies—face significant obstacles in effectively overseeing ESG matters. These challenges include a lack of specialized knowledge about sustainability, reliance on management for key information, limited legal consequences for governance failures, and a common board culture that treats ESG as a compliance task rather than a major accountability issue .
The paper suggests five specific reforms to address these structural challenges: requiring independent directors to have ESG competency, ensuring independent third-party verification of sustainability reports, increasing liability for directors who fail in ESG governance, incorporating important ESG measures into regular financial reporting , and creating dedicated ESG oversight committees at the board level.
The central point is clear but essential: improved ESG reporting alone will not stop greenwashing unless those tasked with overseeing the reporting are properly equipped and motivated to take the responsibility seriously...
Keywords: ESG Disclosure; Greenwashing; Independent Directors; Corporate Governance; Board Accountability; Sustainability Reporting; Director Liability; Comparative Law; BRSR; CSRD; TCFD; Fiduciary Duty; Third-Party Assurance.

Introduction

A troubling contradiction exists within the current ESG discussion. The main reason for requiring companies to report on their sustainability performance was to create accountability, providing investors, regulators, and other stakeholders with important data to recognize responsible businesses and hold those who are not accountable. However, research from major economies shows that mandatory reporting has led to a very different result: the rise of an industry focused on managing its public image. In this context, sustainability reports are mostly used as marketing tools rather than true reflections of how companies actually operate.

The scale of this issue is significant. Studies by global professional services firms, investigations by securities regulators in the United States, Europe, and Asia[1], as well as actions by consumer protection agencies, all point to the same conclusion. Companies often claim ESG credentials that are not backed by their actual practices. They use vague and hard-to-verify language to create an impression of environmental responsibility that contradicts

[1] https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf

specific facts. They highlight favorable statistics while withholding the background information needed for a fair assessment of their overall performance. These actions are done openly, through documents approved by their boards and submitted to regulators, with few real consequences.

Despite this, the response to ESG has been strong and continues to grow. In India, the Securities and Exchange Board of India (SEBI) introduced the Business Responsibility and Sustainability Reporting (BRSR) framework in 2021[2], requiring the top 1000 publicly listed companies to make organized sustainability disclosures. In 2023, it added a series of mandatory key performance indicators, verified by independent third parties. The European Union's Corporate Sustainability Reporting Directive, which became effective in January 2023[3], will eventually cover more than 50,000 organizations and require extensive disclosures validated by independent auditors against legally binding standards. The United Kingdom has integrated climate-related financial disclosures into its listing rules and updated the Corporate Governance Code to strengthen board responsibility for sustainability-related risks.

Each of these frameworks is based on the belief that voluntary disclosure is not enough and that only through legislation can companies be required to provide accurate and complete sustainability information[4]. This belief is likely correct. However, the challenge is that mandatory reporting systems are only as strong as the governance systems that implement and monitor them. This is a major and largely ignored problem in all three regions.

Independent directors lead these governance structures. These board members are responsible for offering impartial oversight of management, protecting the interests of shareholders and other stakeholders, and ensuring the accuracy and completeness of company disclosures. In theory, they are well-positioned to serve as internal watchdogs for ESG disclosure integrity. In practice, the question of whether they are actually capable of fulfilling this role, given their existing knowledge, the information they have access to, and the support they receive, is an issue that governance research has not fully examined, and regulators in all three regions have largely avoided[5].

This paper directly addresses this question. It explores how ESG regulatory frameworks in India, the EU, and the UK have dealt with the challenge of board-level oversight, the formal roles expected of independent directors in ESG governance, and whether the current structure of corporate boards enables them to effectively carry out this role. The paper argues that there is a major and systemic oversight gap at the heart of ESG governance—a gap that increased disclosure requirements alone will not fix. It proposes a set of focused reforms aimed at aligning board-level accountability with the growing ambitions of the regulatory effort.

2. RESEARCH PROBLEM

The issue of greenwashing has grown much worse as ESG frameworks have changed from being optional guidelines to mandatory legal requirements. When a company falsely portrays its environmental practices to investors, it is not just behaving unethically—it may be providing false and significant information to financial markets, breaking legal duties owed by its directors, and weakening the regulatory system that has taken billions of pounds from investors and years of regulatory work to build.

Recent major regulatory actions have shown both the seriousness of the problem and how internal governance systems have failed to stop it. In Europe, a large asset management company faced a regulatory probe and police inspections after claims that it had consistently misrepresented the ESG qualities of its investment products[6]. In the UK, consumer protection authorities uncovered widespread false environmental claims in businesses that directly serve customers. In India, research has shown gaps between the BRSR disclosures and real environmental performance, especially in the energy and manufacturing industries. All these cases share a common issue: the internal governance structures, such as board supervision, audit committees, and management verification, were not able to detect or handle the misleading claims that appeared in official regulatory reports.

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[2] https://www.esma.europa.eu/sites/default/files/2024-06/ESMA36-287652198-2699_Final_Report_on_Greenwashing.pdf
[3] https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2464
[5] https://www.jstor.org/stable/1229133
[6] https://researchrepository.rmit.edu.au/esploro/outputs/journalArticle/Connecting-the-COVID-19-pandemic-environmental/9921863703001341

This failure is not random. It is due to deeper issues in corporate governance that current regulations have not yet solved[7]. The study of governance has long shown that board oversight depends heavily on the quality of information shared between management and directors and on the directors' ability to independently assess that information. In the ESG context, this is difficult because management is responsible for both creating and managing sustainability data, and most independent directors do not have the specific knowledge needed to critically evaluate it. As a result, even though companies follow disclosure rules, there is a major lack of oversight, which lets greenwashing continue.

The key question this paper investigates is: To what extent are independent directors ready and authorized to stop misleading ESG disclosures within today's corporate governance systems?

This question has three aspects: normative, practical, and comparative. Normatively, what are the specific rules in company law and governance codes in India, the EU, and the UK regarding independent directors' role in ESG matters[8]? Practically, are these rules being followed? Comparatively, what lessons do the different regulatory approaches in these regions offer about the governance factors that either support or hinder board-level ESG responsibility?

3. RESEARCH OBJECTIVES

This paper is structured around four related goals. The main goal is to clarify the responsibilities of ESG disclosure in India, the EU, and the UK. It aims to identify the specific information that companies must disclose, as well as the individuals within corporate structures who are explicitly responsible for ensuring the accuracy, completeness, and relevance of these disclosures[9]. While regulatory systems define legal duties for companies, corporate governance requires understanding how these duties are assigned to specific individuals and institutions within the company.

The second goal is to examine the role of independent directors in ESG governance in these three regions. This involves going beyond general statements about board responsibilities to understand the specific legal duties, governance code expectations, and institutional structures that are meant to support these responsibilities, as well as to recognize any existing gaps.

The third goal is to identify and explain the structural factors that limit the effectiveness of independent director oversight in ESG matters. These factors include the information gap between management and the board, a lack of specialized ESG knowledge among directors, weak assurance systems, insufficient enforcement mechanisms, and corporate cultures that emphasize compliance over accountability.

The fourth goal is to suggest a set of governance reforms that address these structural limitations.

These reforms are based on a comparative analysis and are designed to fit within the unique legal and regulatory environments of the three jurisdictions under study.

4. RESEARCH METHODOLOGY

This study uses a doctrinal and comparative legal approach to analyze ESG disclosure and director accountability. The doctrinal part of the study looks at the main legal documents in each country that set the rules for ESG disclosure and director responsibilities. These include laws, regulations, corporate governance codes, and court or regulatory decisions where relevant. This method is appropriate because the study focuses on understanding the legal requirements, how these requirements affect corporate governance, and whether the current legal systems are effective in reaching their goals.

The comparative part of the study looks at three different countries that have taken very different approaches to regulating ESG governance. India is a major emerging economy with a developing ESG framework. Its system is influenced by concentrated ownership, limited enforcement capabilities, and a mix of large, globally experienced companies and smaller businesses that face governance issues. The EU has the most detailed and strict ESG regulations, with clear rules, double materiality assessments, and strong systems to verify disclosures. The UK

[7] https://www.jstor.org/stable/27673249
[8] https://www.jstor.org/stable/2692200
[9] https://global.oup.com/academic/product/an-introduction-to-comparative-law-9780198268598

follows a principles-based approach, integrating ESG requirements gradually while still relying on board judgment and market forces to ensure good governance.

The main legal documents used in this study include the SEBI BRSR framework (2021) and the BRSR Core circular (2023), the CSRD (2022) and the ESRS (2023), the FCA's TCFD disclosure rules, the UK Corporate Governance Code (2024), the Companies Act 2013 (India), and the Companies Act 2006 (UK). Additional sources include academic research on ESG law and governance, reports from SEBI, ESMA, and the FRC, surveys on board expertise and sustainability assurance practices, and legal cases that show how the legal systems work in practice.

The comparison is organized around three key areas: regulatory design, which looks at whether ESG obligations are mandatory and how broad they are; governance architecture, which examines the role of boards and independent directors; and enforcement mechanisms, which consider the legal and institutional tools available to ensure compliance. By structuring the comparison this way, the study can systematically evaluate how each country deals with the key challenge of making sure that ESG disclosure rules are supported by strong oversight.

5. ESG DISCLOSURE AND GREENWASHING: CONCEPTS AND LEGAL DIMENSIONS

ESG disclosure is based on the principle that transparency is required. This idea is well-supported in financial regulation: requiring companies to report important information helps reduce the gap in knowledge between those inside a company and those outside, improves the quality of decisions made in the market, and encourages better corporate behavior[10]. When applied to sustainability, this reasoning suggests that if organizations are required to provide clear information about their environmental impact, how they treat their workers, and the structures they use to manage their operations, they will face pressure from stakeholders, customers, and regulators to improve these areas over time.

However, there is a challenge when applying this same logic to sustainability disclosures compared to financial ones. Financial reports follow globally accepted accounting rules, are regularly checked by independent auditors, and are measured against specific numerical standards that can be independently confirmed. In contrast, environmental, social, and governance (ESG) disclosures vary widely across regions and organizations, often using different and sometimes conflicting standards, and are rarely subjected to the same level of scrutiny as financial audits[11]. This makes them more susceptible to manipulation through the way information is framed, the selection of data, and the use of deliberately vague or ambiguous language.

Greenwashing is the deliberate misuse of these weaknesses. While it does not have a fixed legal definition, it generally refers to situations where an organization creates misleading or untrue claims about its environmental or social performance. In practice, it takes many forms. The most obvious type involves false claims, such as labeling a product as carbon neutral when independent analysis shows otherwise, though this is not the most common form. More often, greenwashing occurs through statements that are technically accurate but misleading in context, such as declaring significant emissions reductions without disclosing an unusually high starting point or indicating that progress comes from changes in accounting methods rather than real improvements in operations[12].

A common form of greenwashing is selective reporting, where favorable ESG indicators are highlighted while negative data is omitted. For instance, an organization might focus on its use of renewable energy and efforts to promote diversity among employees, while ignoring emissions generated from its supply chain, incidents of water pollution, or pay gaps based on gender. This creates a misleading picture, even if each individual piece of information presented is true. Additionally, vague and unverifiable language like "committed to a sustainable future" or "working towards net positive impact" allows organizations to appear virtuous without making commitments that can be assessed or challenged.

From a legal perspective, greenwashing can involve multiple areas of law. In securities regulation, it may involve providing misleading information to investors, which could lead to regulatory actions and legal cases. The EU's Sustainable Finance Disclosure Regulation, for instance, has come under scrutiny for cases where investment products were categorized under more strict Article 8 and 9 categories without meeting the necessary criteria. In

[10] https://www.jstor.org/stable/10.1086/250042
[11] https://academic.oup.com/rof/article/26/6/1315/6590670
[12] https://www.esma.europa.eu/sites/default/files/2023-06/ESMA30-1668416927-2498_Progress_Report_Greenwashing.pdf

the UK, consumer protection laws have been used to address misleading environmental claims in the marketplace through the CMA's Green Claims Code. Corporate law may also apply when misleading disclosures breach a director's duty of care. In some places, lawsuits have started to hold entities accountable for discrepancies between their declared climate goals and their actual greenhouse gas emissions.

The reason greenwashing is hard to stop with traditional regulatory measures is that it often comes not from outright lies but from careful control of how information is presented, emphasized, and worded. A sustainability report can be factually correct in every detail yet still create a deeply misleading overall impression. Solving this problem requires not only better disclosure rules but also stronger governance frameworks, including more capable, informed, and accountable boards. This brings the discussion back to the role of independent directors.

6. INDEPENDENT DIRECTORS AS ESG GOVERNANCE GATEKEEPERS

Independent directors act as the main internal system through which corporate governance deals with the conflict of interest between company management and shareholders[13]. Managers who handle the company's day-to-day operations often have personal interests such as salary, job stability, and professional reputation that may not fully match the company's overall goals. To address this, independent directors are appointed. These are board members who do not have financial or personal ties with management and bring an unbiased view to discussions about company strategy, executive pay, risk management, and the accuracy of financial reports.

In India, the Companies Act of 2013 defines independent directors in terms of not having major or financial connections with the company, its founders, or its directors. It also requires that these directors have relevant expertise and experience. The Securities and Exchange Board of India (SEBI) Listing Regulations set the minimum number of independent directors required on the board of listed companies as well as the committees they must be part of, such as the audit, nominations and remuneration, and risk management committees[14]. In the UK, the Corporate Governance Code describes independence based on situations that might influence or seem to influence a director's judgment. It also sets standards for the quality and content of their contributions, including ensuring the accuracy and honesty of financial and descriptive reports.

Under the ESG (Environmental, Social, and Governance) framework, the role of independent directors goes beyond traditional oversight functions. They are expected to review and critically evaluate sustainability reports prepared by management, assess ESG-related risks to the company's strategy, oversee the reliability of data systems and methods used to measure sustainability performance, and ensure that the board's approach to ESG is meaningful, not just surface-level. These responsibilities require not only general business knowledge but also specific expertise in areas such as carbon accounting, human rights due diligence in supply chains, biodiversity impact assessments, data privacy, and many others. No single director can have expertise in all these fields, and many lack substantial knowledge in any.

Board surveys consistently point out this lack of expertise. Data from major professional service firms shows that ESG is one of the areas where corporate boards most frequently report skill gaps in both developed and emerging economies. When directors don't have the necessary knowledge to assess sustainability data, they tend to ask procedural questions like: Was the report reviewed by the relevant committee? Was it prepared by qualified people? Rather than asking about the accuracy of the report. This type of supervision gives the appearance of accountability without real substance.

The issue of information asymmetry makes the expertise gap even worse. ESG data is usually produced by internal teams such as sustainability, investor relations, and corporate communications, all of which report to management instead of directly to the board. Independent directors are given the information that management chooses to share, often in a format and level of detail that management deems appropriate. Without specialized knowledge to recognize missing information, the ability to critically evaluate the methods used to collect data, and enough power to request more information, directors cannot overcome this disadvantage[15].

The comparison with financial reporting is helpful. In the financial area, the audit process provides an institutional solution for information asymmetry: an independent professional with full access to company records, the responsibility to give an unbiased opinion on the accuracy of financial statements, and personal liability if they

[13] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=94043
[14] https://www.sebi.gov.in/legal/regulations/sep-2015/sebi-listing-obligations-and-disclosure-requirements-regulations-2015_34491.html
[15] https://www.iaasb.org/media/view/6396

certify misleading accounts. However, there is no such equivalent for most ESG disclosures in most jurisdictions. Although ESG regulations have increased, the independent verification systems needed to support board-level oversight have not developed at the same rate.

Academic studies on the connection between board composition and ESG performance support this analysis. Research on Indian listed companies has found a moderate positive link between the proportion of independent directors and the quality of ESG disclosures. However, these studies also show that specialized ESG expertise among directors is a significant factor that influences the effectiveness of board oversight. Similar results have been found in European and US corporate governance literature, reinforcing the conclusion that while having independent directors is necessary, it alone is not enough to ensure effective ESG oversight.

7. COMPARATIVE REGULATORY ANALYSIS

7.1 India: The BRSR Framework

India's approach to ESG regulation has seen significant development in recent years. The BRSR framework, introduced by SEBI in 2021, requires structured disclosures from the top 1000 listed companies across nine principles based on the National Guidelines on Responsible Business Conduct. These principles cover a wide range of sustainability areas, including environmental responsibility, labor and employment conditions, support for marginalized groups, stakeholder participation, responsible advocacy, consumer protection, and governance integrity. This framework is more socially inclusive than similar systems in developed markets, reflecting India's unique developmental context and the importance of informal labor, supply chain welfare, and community impact in large corporations.[16]

The 2023 BRSR Core circular marked a major strengthening of the framework. It introduced 49 mandatory KPIs across environmental, social, and governance areas, all requiring phased mandatory third-party assurance, starting with the top 150 listed companies in the financial year 2023–24, with broader coverage in later years. This addressed the main weakness of the earlier BRSR framework, which required companies to make disclosures without a verification mechanism. The phased approach reflects a realistic assessment of current market capabilities, as the number of qualified sustainability assurance providers in India is still limited, while ensuring a clear path toward more comprehensive and reliable third-party verification.

However, several key challenges remain. Mandatory assurance applies only to the 49 BRSR Core KPIs, not to all BRSR disclosures, a large part of which continues to be narrative and unverified. The quality of disclosures across the top 1000 companies varies significantly, with early reviews showing major differences in methodological transparency, the completeness of quantitative data, and the level of engagement with actual sustainability performance.

Enforcement capacity is also limited. SEBI has the authority to take action against entities providing misleading or false information, but punitive actions specifically targeting ESG misstatements are rare, making it difficult to assess the impact on administrative practices.

Regarding governance, the Companies Act 2013 requires publicly listed companies to have independent directors who meet specified standards of autonomy, and the Listing Regulations set minimum requirements for the proportion of independent directors and their involvement in committees. However, there is no official requirement for directors to have specific ESG expertise. The Kotak Committee proposals focus mainly on board structure and related party transactions, rather than on developing ESG oversight skills. The institutional framework that includes ESG expertise requirements, ESG committee guidelines, and director accountability for inadequate sustainability disclosures is still underdeveloped compared to the increasing demands of the BRSR framework.

7.2 European Union: The CSRD and ESRS

The EU Corporate Sustainability Reporting Directive represents the most comprehensive ESG regulatory framework currently in place globally. It expands mandatory sustainability reporting to include more than 50,000 companies, a significant increase from the roughly 11,000 businesses covered by its previous version, the Non-Financial Reporting Directive. This expansion is achieved through legally binding industry-specific standards

16 https://www.mca.gov.in/Ministry/latestnews/National_Guidelines_on_Responsible_Business_Conduct_2019.pdf

called the European Sustainability Reporting Standards, which provide detailed guidance on the information that must be disclosed in relation to environmental, social, and governance issues.

The conceptual structure of the CSRD is more advanced than earlier reporting systems. It introduces the idea of double materiality, requiring organizations to disclose how sustainability factors impact their financial performance as well as how their operations affect people and the environment. This means that simply focusing on ESG factors that have a direct financial impact is not sufficient; companies must also assess and report on the significant effects of their activities on the wider world, regardless of whether these effects are reflected in their financial records. This approach makes it harder to engage in selective reporting, a practice often associated with greenwashing[17].

The governance requirements under the CSRD are also more rigorous than those in other frameworks. Companies must outline their board's structure for overseeing sustainability, explain how ESG factors are considered in decision-making and strategic planning, and ensure that their sustainability reports receive mandatory limited assurance from an independent statutory auditor. The CSRD also plans a gradual move from limited to reasonable assurance, which, if properly implemented, would bring sustainability assurance closer to the level of financial audit. This shift would significantly change the landscape of ESG governance. The Sustainable Finance Disclosure Regulation further intensifies these governance demands within the financial sector, where product-level ESG claims are closely monitored, and the risk of greenwashing has been particularly high.

The EU framework is not without its difficulties. The size and technical complexity of the ESRS reporting requirements have led to considerable compliance costs and raised valid concerns about proportionality, especially for mid-sized companies that may not have large sustainability teams. There are also questions about the quality and consistency of sustainability assurance, a relatively new field where professional standards are still being developed. Additionally, the effectiveness of the CSRD ultimately depends on enforcement by national regulatory bodies, which vary widely in their resources and enforcement methods across the EU member states. This variation creates the possibility of regulatory arbitrage.

7.3 United Kingdom: TCFD and the Corporate Governance Code:

Following Brexit, the United Kingdom has continued along the general path of its ESG regulatory development, but has chosen not to adopt the EU's mandatory standards framework. As a result, the UK has established a regulatory framework that is more principles-based compared to the CSRD, more dependent on board judgment and market regulation, and more focused on climate as the main ESG risk area. Nonetheless, this approach marks a significant improvement over the previous voluntary disclosure environment that existed before 2021[18].

The Financial Conduct Authority's (FCA) regulations that align with the TCFD represent the most detailed aspect of the UK framework. These regulations require organizations to disclose their governance structures related to climate risks and opportunities, their strategic approach to managing these risks, their risk management procedures, and the specific metrics and targets they use to measure climate performance. By including these disclosures in regular annual reports rather than in separate sustainability documents, the UK approach, in theory, ensures that climate-related information receives the same level of attention from the board as other important reporting areas. The requirement to disclose governance structures for climate risk specifically includes details about board structure and processes, a feature that is missing from many other ESG frameworks.

The 2024 UK Corporate Governance Code further supports this board-focused strategy. It strengthens expectations around board oversight of internal control systems, organizational culture, and long-term value creation, and makes it clear that sustainability-related risks should be part of the board's overall risk management framework rather than treated as a separate, secondary issue. The principles-based nature of the Code means its effectiveness largely depends on the quality of individual boards and the ability of institutional shareholders and other stakeholders to demand real, rather than just superficial, compliance.[19]

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[17] https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html

[18] https://link.springer.com/article/10.1007/s40804-021-00228-2

[19] https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/

A significant gap in the UK framework remains in the absence of mandatory sustainability assurance. Unlike the EU, the UK has not introduced a general requirement for independent verification of sustainability disclosures beyond the specific area of climate-related information. This creates a major gap in the verification system that is unlikely to be filled by voluntary market efforts alone. Investors have shown the value they place on assured sustainability data, and some companies have voluntarily sought assurance for their sustainability reports. However, without mandatory requirements, voluntary assurance tends to be selective and influenced by the entities' own choices about what to scrutinize, rather than by regulators determining what is most essential.

8. STRUCTURAL LIMITATIONS OF INDEPENDENT DIRECTOR OVERSIGHT

8.1 Information Asymmetry:

A significant challenge in effectively monitoring ESG disclosures independently is the fact that management has more information than the board. This imbalance is somewhat addressed in financial reporting through the use of external auditors. An independent auditor can directly access a company's financial records, ask for explanations and supporting documents from management, and is professionally required to provide an assessment of disclosure accuracy that is separate from management's own judgment[20]. The legal and professional consequences of approving incorrect financial statements create strong incentives for auditors to carefully carry out their verification tasks.

However, there is currently no similar system in place for ESG disclosures in most regions.

Typically, sustainability reports are prepared by management, often by internal teams responsible for sustainability, investor relations, or communications. These reports go through internal review and are then presented to the board as final products. In many organizations, independent directors only get to see the final report, not the underlying data, the methodological decisions made, or the internal discussions about how to present difficult information. Unless a director has specific technical skills to recognize missing information or questionable methods, and the authority to demand access to supporting materials, they are fundamentally dependent on management's version of events.

This dependency is especially important in areas where ESG metrics are most flexible. A company's choice to include Scope 3 emissions from its supply chain, how it handles renewable energy certificates, the selection of a baseline year for improvement goals, and the interpretation of contested terms like "sustainable sourcing" or "responsible investment" can all significantly affect the message of an ESG report, while still complying with relevant disclosure rules. A director looking at a finished report has no real way to determine whether these methodological choices are based on objective measures or on efforts to create a favorable impression[21].

8.2 The ESG Expertise Gap

The lack of specialized knowledge in ESG (Environmental, Social, and Governance) among independent directors is a distinct yet closely related issue. Historically, corporate boards have been made up of executives who bring expertise in finance, law, operations, and industry-specific technical areas. While these backgrounds provide strong foundations for financial management and strategic advice, they do not automatically prepare directors to scrutinize sustainability reports, evaluate climate risk assessments, review supply chain human rights due diligence processes, or interpret metrics related to water and biodiversity.

Data from leading professional services firms consistently shows that ESG knowledge is one of the most significant skill gaps among corporate boards in both developed and developing countries.

Most directors admit that their boards lack the necessary expertise to carry out effective ESG oversight. Importantly, this issue is not just about individual skill levels; it reflects the structure of boards and the process of selecting directors. ESG competence has not yet been treated as a fundamental requirement for directors in the same way that financial literacy or industry experience is. Additionally, assessments of director skills outlined in governance codes have been slow to include sustainability knowledge as a key criterion.

[20] https://www.jstor.org/stable/27784259

[21] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf

The real-world impact of this knowledge gap is significant. A director without expertise in carbon accounting, for example, may not be able to critically assess a management claim that the company is progressing toward a net-zero goal. Likewise, a director who is not familiar with international human rights standards or supply chain due diligence practices may not be able to judge whether a supplier audit program is thorough or just a formality. Without such knowledge, board oversight reduces to checking that reports are produced, reviewed, and submitted on time, rather than engaging meaningfully with their content.

8.3 Weak Enforcement and Director Liability:

Even when **a director** has the ability to identify concerns related to **ESG disclosures** and the information needed to explain them, their willingness to act is influenced by the limited legal consequences of failing in ESG governance. In financial reporting, directors may be personally held accountable for major false statements. The possibility of legal action by securities regulators and professional bodies creates strong reasons for all parties to take disclosure accuracy seriously The Caremark standard, which holds directors liable for ongoing failures in establishing proper oversight systems, has become more prevalent in ESG-related legal cases in the United States. In contrast, the ESG landscape in India and the UK differs significantly.

In India, although the Companies Act 2013 imposes broad fiduciary duties that, in theory, could include ESG disclosures there are no clear legal provision assigning liability for weaknesses.

Consequently, legal actions against directors for poor sustainability governance are rare. In the UK, the Companies Act 2006 outlines directors' responsibilities but does not specifically address ESG oversight. The Financial Reporting Council has not issued detailed guidance on how directors should apply their duty of care and skill to sustainability disclosure. As a result, the risk of personal legal consequences for inadequate ESG oversight is low in both countries, creating an environment where the easiest approach is to approve management-prepared sustainability reports without thorough independent evaluation[22].

8.4 The Compliance Culture Problem

Another important factor is the compliance-focused nature of ESG governance in many organizations. When ESG considerations are driven mainly by the need to follow regulations and avoid reputational harm, rather than by a genuine commitment to sustainability as an ethical or strategic priority, the disclosure process becomes an end in itself. The goal changes from presenting the company's real environmental and social impacts truthfully to simply meeting the requirements of the relevant framework. This results in the production of reports that fulfill formal demands instead of accurately reflecting the company's actual performance.

This compliance-driven mindset shapes how independent directors approach ESG matters.
Directors who view their role as ensuring the company follows formal obligations often focus on
procedural aspects such as completing reports on time, covering all required topics,and getting appropriate com mittee approval. While these tasks are important, they do not address more fundamental oversight issues, such as:

whether the report accurately reflects the company's environmental performance,

whether the methods used to calculate reported metrics are trustworthy and consistent, and

whetherthe report gives a fair overall picture.

The nature of most ESG reporting reinforces this tendency. Statements of commitment, policy description and idealistic language about sustainability goals are generally harder to dispute than specific financial figures[23]. A director reviewing a balance sheet has clear numbers to analyze, whereas a director assessing a commitment to "continuous improvement in environmental performance" lacks clear criteria for evaluation. The flexibility of ESG language itself presents a governance challenge, and more detailed disclosure standards alone will not fully address this issue without corresponding improvements in the quality of board oversight.

9. SALIENT OBSERVATIONS

[22] https://www.pwc.com/us/en/services/governance-insights-center/library/annual-corporate-directors-survey.html

[23] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2085628

The detailed comparison of regulatory approaches and the examination of structural governance limitations have led to six significant findings regarding the current state of ESG governance in the three evaluated countries.

Firstly, ESG disclosures are mainly driven by management in all three jurisdictions. Although regulatory systems have focused on expanding mandatory disclosure requirements and increasing the number of entities required to follow these rules, they have not sufficiently addressed the individuals within corporate structures who actually make decisions about the creation and presentation of sustainability information. This decision-making power remains with management rather than the board, which creates an environment that is favorable to greenwashing, regardless of the legal requirements for disclosure.

Secondly, independent directors face major informational and expertise challenges that regulatory systems have not effectively resolved. None of the three jurisdictions currently require directors to have specific ESG expertise. Additionally, none has created institutional structures similar to financial reporting audits, which would provide directors with access to independent, unbiased information about the accuracy and completeness of sustainability data. Directors are being asked to manage a complex area about which they are often unprepared and lack adequate institutional support.

Thirdly, the presence and quality of independent assurance requirements are the most noticeable difference among the three regulatory models. The EU's requirement for mandatory external assurance is clearly more credible compared to India's partial and gradual assurance requirements or the UK's mostly voluntary assurance framework. While assurance does not completely eliminate greenwashing, it significantly increases the cost and risk of making misleading disclosures and provides directors with an independent evaluation of data quality, which is lacking in most other jurisdictions.

Fourthly, enforcement actions are insufficient compared to the regulatory expectations in all three jurisdictions. The probability of a company or its directors facing severe legal consequences for ESG-related governance issues remains low. This creates a structural tolerance for inadequate oversight, an issue that increased disclosure requirements alone cannot resolve. The regulatory framework for ESG is developing faster than the enforcement mechanisms needed to provide real deterrent effects.

Fifthly, many companies still maintain governance cultures that focus on meeting compliance requirements rather than achieving true accountability. This is partly due to how ESG frameworks have been introduced as external regulatory requirements instead of being embraced as internal governance priorities. This is further reinforced by the nature of most disclosure mandates, which make it difficult for even well-meaning and capable directors to challenge the substance of disclosures.

Sixthly, the three jurisdictions offer valuable insights for future reforms. India's experience highlights the importance of building assurance market capacity alongside disclosure requirements. The EU's approach demonstrates the potential benefits of comprehensive mandatory reporting but also shows the dangers of regulatory overreach without adequate governance support. The UK's principles-based model illustrates the advantages of board-level accountability while also pointing out the limitations of market discipline without stronger verification and enforcement mechanisms[24].

10. GOVERNANCE REFORM RECOMMENDATIONS

The structural impediments identified in this paper cannot be resolved solely through the expansion of disclosure mandates. Five targeted reforms are proposed, each meticulously designed to address a specific structural limitation on independent director oversight of ESG disclosures.

10.1 Compulsory ESG Competency Prerequisites for Independent Directors:

It is essential that at least one independent director on the boards of companies required to disclose ESG information possesses defined competencies in ESG matters. This does not mean every director needs to be an expert in sustainability; having a variety of skills and experiences is indeed beneficial for corporate boards. However, it is important to ensure that each board has the necessary expertise to thoroughly evaluate sustainability reports prepared by management and to assess ESG-related risks through sound technical analysis. Regulatory bodies such as SEBI, national authorities overseeing the implementation of the CSRD, and the FRC should create minimum standards of proficiency for directors overseeing ESG matters, using established certification systems.

[24] https://kpmg.com/xx/en/home/insights/2022/09/survey-of-sustainability-reporting-2022.html

Mandating ESG training for all directors of covered companies would support these proficiency requirements. This training should cover both the technical aspects of sustainability reporting, including methods for creating greenhouse gas inventories, the importance of supply chain due diligence, and how to interpret assurance reports, as well as governance-related topics: what questions to ask management, how to develop strong ESG oversight at the board level, and when to conduct deeper investigations into the accuracy of disclosed information.

10.2 Mandatory Independent Sustainability Assurance

Mandatory external verification of ESG disclosures should be extended to all three legal frameworks, adapted to each region's regulatory context. India should accelerate the expansion of BRSR core assurance beyond its current phased approach and broaden the scope of assurance requirements to cover a wider range of KPIs gradually, while also investing in enhancing assurance market capabilities and professional standards. The UK should introduce mandatory assurance requirements for TCFD disclosures and other significant ESG disclosures, using the FRC's existing financial reporting structure and the EU's CSRD framework as a guide. Sustainability assurance should be structured similarly to financial audits, allowing assurance providers unrestricted access to core data systems and management processes.

They should have the right to raise concerns directly with the board instead of only with management, and be responsible for reporting significant issues in data governance and the accuracy of disclosed metrics. Assurance that merely validates the process of disclosure rather than verifying the reliability of the data does not provide the governance benefits that independent directors need[25].

10.3 Enhanced Director Liability for ESG Governance Failures

Legislation should be enacted in all three jurisdictions to establish clear director accountability for the quality of ESG disclosures. The aim is not to hold directors fully responsible for every minor discrepancy in complex sustainability reports, which would be excessive and discourage qualified individuals from serving on boards. Instead, it is about creating a clear and credible legal basis for holding directors personally accountable when they fail to exercise proper diligence in overseeing ESG disclosures, particularly when clear signs of discrepancies were present but not investigated.

India should amend the Companies Act 2013 to include explicit provisions regarding director accountability for the accuracy of sustainability disclosures, modeled after the existing framework for directors' responsibility statements in financial reporting.

The FRC in the UK should issue guidelines on the application of directors' duties to ESG oversight, and the government should consider whether the Companies Act 2006 needs to be updated to make these duties sufficiently clear to support enforcement in cases of ESG governance failures. In the EU, member states should implement the collective board accountability provisions of the CSRD in a way that provides them with specific and enforceable legal consequences.

10.4 Integration of ESG Metrics into Financial Reporting

In most jurisdictions and for most entities, the separation of sustainability disclosures from financial statements creates a dual governance structure where ESG information is subject to significantly less oversight than financial data. Integrating relevant ESG metrics into standard financial reporting, or into the management report that is part of the audited annual report, would bring sustainability disclosures under existing oversight mechanisms, including external audits and review by the audit committee.

The EU's CSRD is advancing in this direction by requiring that sustainability information be included as part of the management report. India should explore ways to better integrate BRSR disclosures with financial reporting timelines and oversight processes. The UK should consider whether major TCFD disclosures should be subject to a higher level of assurance similar to that applied to financial statements. The key principle is that sustainability information important to investors' decisions should be subject to the same level of oversight rigor as any other significant corporate disclosure.

10.5 Dedicated Board-Level ESG Oversight Committees

[25] https://www.iaasb.org/publications/international-standard-sustainability-assurance-issa-5000-general-requirements-sustainability

Current board committees such as audit, remuneration, and nomination committees were established in a governance environment where sustainability was not a major concern at the board level. The increasing number of ESG obligations and the growing importance of sustainability risks to corporate strategy justify the creation of specialized ESG oversight committees with defined terms of reference, specific membership criteria, and clear reporting lines to the full board.

These ESG committees should be empowered to engage independent experts, access core sustainability data and challenge management's approaches, and interact directly with external assurance providers[26].

Their existence, composition, mandate, and activities should be disclosed in the annual report. This transparency fosters accountability not only to regulators but also to institutional investors and other stakeholders who increasingly and reasonably have concerns about the quality of sustainability governance at the board level, and who may justifiably be skeptical of the sustainability disclosures they receive due to the lack of robust oversight mechanisms.

11. CONCLUSION

The main goal of ESG regulation deserves support. The idea that companies should openly share information about their environmental impact, how they treat their employees and communities, and how well they manage their internal systems reflects a real and widespread desire for corporate responsibility that goes beyond just focusing on shareholder profits. The rules that require companies to report in India, the EU, and the UK show a strong regulatory effort to turn this desire into real, enforceable responsibilities.

The main point of this paper does not contradict this goal. Instead, it questions the common assumption in most regulatory systems that just increasing the amount of information companies must share is enough to achieve real accountability. The main problem here is not about a lack of information, but rather a lack of proper governance. Independent directors are meant to be the main internal check on false sustainability claims. However, the way they work—relying on management for information, not having enough specialized knowledge, limited legal responsibility, and a governance approach focused on following rules—makes it very hard to effectively oversee ESG matters.

This lack of oversight has real and serious consequences. It is the way greenwashing happens, year after year, in documents that are officially approved by the board. Fixing this issue requires more than just making companies share more information. It requires improving the ability of those responsible for oversight—ensuring they have the right knowledge, independent access to information, the support they need within their organizations, and the legal responsibility to take their ESG governance duties seriously.

The five reforms suggested in this paper—mandatory ESG knowledge requirements, independent verification, stronger director responsibility, integration with financial reporting, and the creation of dedicated ESG committees—are designed to address the structural problems found in the comparison of these three regions.

These reforms are not a complete solution to the problem of greenwashing, which involves many other economic, cultural, and enforcement factors beyond board governance. However, they are essential for making the current ESG regulatory efforts work as intended.

The main takeaway is that sustainability disclosure rules can only be effective if the governance structures in place are strong enough to implement and oversee them. Each of the three regions studied has made real progress in developing these rules. However, the part of the process related to how well boards can hold management accountable for the truth of what is shared has not kept up. Fixing this gap is the most important unfinished task in ESG governance reform. The credibility of ESG as a tool for corporate accountability depends on this.

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[26] https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf

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