Stock Exchanges and Sustainability in India: Solving the Sustainability Challenge

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Introduction

Stock markets are the market place for investors to trade *i.e.,* buying and selling stocks.[1] The market forces of demand and supply determine the price for all transactions of buying and selling that occur in the capital market. Stock markets are also important for the reason that they are the indicators of strength and wellbeing of the economy.[2] The history of development of stock markets in India would present a fascinating account. Before Indian independence, Britishers did not institute any legal mechanism to regulate the capital markets.[3] The share mania crisis of 1865 shook the market with looming losses. That an abundantly grown agricultural product cotton is behind its history would be astounding to a reader unawares of the history of

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[1] Bhumika Indulia, The Indian Stock Market Saga, SCC BLOG (Jul. 8, 2020), https://www.scconline.com/blog/post/2020/07/08/the-indian-stock-market-saga/ (last visited Dec 20, 2022).

[2] Aditya Prasad Sahoo, Macroeconomic Impression and Performance of Stock Market in India, 3 IJFES 1 (2023).

[3] Tirthankar Roy, The Economic Legacies of Colonial Rule in India: Another Look, 50 EPW 51,54 (2015), https://www.jstor.org/stable/24481887.

development of the capital market in India. The American Civil War of 1861 led by Abraham Lincoln, the sixteenth president in the United States campaigned against slavery. The war cut off sourcing of cotton from the USA to Europe. This led to an increase in demand of cotton to be supplied from India to the Lancashire cotton manufacturing industry inEngland.[4] The prices of cotton increased.[5] There was a sudden spurt in wealth as cotton suppliers from India started setting up companies for every conceivable purpose to invest the surplus resources. Financing was provided by city's indigenous banks, until Bank of Bombay was established in 1840. Gradually people started trading in shares of cotton companies. Between 1840-50 there were six brokers who were prominent in the market. Among them, Seth Premchand Roychand was called as the Cotton King as he was the first Indian broker to

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[4] Gijsbert Oonk, The Emergence of Indigenous Industrialists in Calcutta, Bombay, and Ahmedabad, 1850-1947, 88 THE BUSINESS HISTORY REVIEW 43,65 (2014), https://www.jstor.org/stable/43299519 (last visited Apr 20, 2023). A little history into cotton manufacturing would show how Bombay-China trade in cotton supplied from Bombay combined with opium from other parts of India in return for tea imported from China had spurted for Bombay's take off as early as 1784. Amar Farooqui, Urban Development in a Colonial Situation: Early Nineteenth Century Bombay, 31 ECONOMIC AND POLITICAL WEEKLY 2746 (1996), https://www.jstor.org/stable/4404661 (last visited Mar 20, 2023). It is also interesting to see that even before the American Civil war , there has been an urge from Manchester School of Free Traders to the British government to adopt strategies for increased production of cotton so as to feed Lancashire, as otherwise, too much dependency on USA can be dangerous. Dwijendra Tripathi, Opportunism of Free Trade: Lancashire Cotton Famine and Indian Cotton Cultivation, 29 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 108 (1967), https://www.jstor.org/stable/44138004 (last visited Mar 20, 2023).

[5] Gijsbert Oonk, The Emergence of Indigenous Industrialists in Calcutta, Bombay, and Ahmedabad, 1850-1947, 88 THE BUSINESS HISTORY REVIEW 43,65 (2014), https://www.jstor.org/stable/43299519 (last visited Apr 20, 2023).

be able to speak, read and write English.[6] From the years spanning between 1863 and 1865, there were new business which raised about thirty crore rupees in the form of paid-up capital and about thirty-eight crore rupees as the premia.[7] Finally, the market crashed in 1865. The British government introduced a 'Bill for the relief of Insolvent Debtors in the Presidency of Bombay' in the Bombay Legislative Council'.[8] The bill was sent over to the 'Select Committee', but it remained ignored for about two years and in September 1867, the Bill was cancelled.[9] This shows that the initial attempt to regulate the Indian capital markets became unsuccessful. Along with this, another senseless speculation came in the form of the Backbay reclamation which was a major fiasco.[10] The Backbay reclamation company which was formed during the boom years of the early 1860's went bankrupt when the American Civil War ended in 1865 as the values of land fell down. The shares of Back Bay Reclamation dropped significantly from Rs 50,000 to under Rs 2,000 *i.e.,* a decline of over 96 per cent.[11] This also affected the Bank of Bombay's shares which were once sold at Rs 2,850 came

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[6] Mridula Ramanna, Profiles of English Educated Indians: Early Nineteenth Century Bombay City, 27 ECONOMIC AND POLITICAL WEEKLY 716, 720 (1992), https://www.jstor.org/stable/4397765 (last visited Sep 20, 2023).

[7] SEBI | A Historical Perspective of the Securities Market Reforms, https://www.sebi.gov.in/media/speeches/mar-2004/a-historical-perspective-of-the-securities-market-reforms_2882.html (last visited Dec 19, 2022).

[8] Indian Capital Markets and The Regulatory Authorities, DOCZZ.NET, https://doczz.net/doc/8712839/chapter-7-indian-capital-markets-and-the-regulatory (last visited Mar 25, 2023).

[9] *Id.*

[10] DWIJENDRA TRIPATHI, THE OXFORD HISTORY OF INDIAN BUSINESS 102 (2004).

[11] Sachin P. Mampatta & Rajesh Bhayani, How Abraham Lincoln triggered India's first stock market crash, (2015), https://www.business-standard.com/article/beyond-business/150-years-later-115071001354_1.html (last visited Dec 19, 2022).

falling down to Rs 87.[12] The British government proposed a Bill for the relief of insolvent debtors in Backbay but was withdrawn.[13]

The brokers whose prominence arose during the civil war were driven from pillar to post by the police after the American Civil ended as they were considered as a social nuisance.[14] Finally, at Dalal Street in Mumbai they restarted their business.[15] The Native Share and Stock Brokers' Association was formed that later came to be known as Bombay Stock Exchange (BSE) was established in Bombay in 1875.[16] This paved the groundwork for the oldest stock exchange in India. The term 'native' itself meant that only citizens or natives of India could be brokers of the Exchange.[17] To set up a formal market, the indigenous brokers formed some stock exchanges. Some of the earlier stock exchanges were the Ahmedabad Share and Stock Brokers Association, 1894[18] and the Calcutta Stock Exchange, 1908.[19]

Looking at the legislative landscape, it was evident that under the British rule, very archaic legislations existed. The hideousness and the inappropriateness

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[12] *Id.*

[13] *Id.*

[14] *Supra note 7.*

[15] *Id.*

[16] History and Milestones, https://www.bseindia.com/static/about/History_Milestones.html (last visited Mar 20, 2023).

[17] *Supra note 7.*

[18] Old Stock Exchange, HERITAGE.AHMEDABADCITY.GOV.IN, http://heritage.ahmedabadcity.gov.in/details/124/heritage_site/en (last visited Mar 20, 2023). Historical accounts show that a number textile mills were established in Ahmedabad in 1880s which created a need for trading of shares. Hence, in 1894, the brokers of Ahmedabad established 'The Ahmedabad Share and Stock Brokers' Association.'

[19] CSE-India, WWW.CSE-INDIA.COM, https://www.cse-india.com/Pri_cont/factbook (last visited Mar 20, 2023).

of the economic controls and laws were very transparent in the era between 1939 and 1945 when the Second World War hit the British India and the new war priority beckoned the imperialistic government to make every efforts to respond to it urgently.[20] Thus, the Defense of India Act 1939 was formulated which further provided the Defence of India Rules in 1943 introducing the Controller of Capital Issues.[21] The main aim under the rules was to channelize funds to the war front for the Britishers. As per a confidential report published by the Government of India, the country's contribution to support the war was monumental.[22] In fact, a delve into the past accounts of colonial rule would expose the brutal exploitation of the Indian economy that appreciatively produced the narrative of 'economic nationalism', an approach that fought against the foreign rule.[23] The Defence of India Rules which also ridiculously regulated the capital market were later substituted by the Capital Issues (Continuance of Control) Act, 1947.

The watershed in the regulation of the stock exchanges was through the introduction of the Bombay Securities Contracts Control Act, 1925. The Report on Bombay Stock Exchange Enquiry Committee in 1924 headed by Sir Wilfrid Atlay was instrumental in the recommendation of a strong regulatory network that paved for the passing of the Bombay Securities and Contract Act, 1925. A revision to this, with a comprehensive outlook in stock

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[20] Indivar Kamtekar, The Wartime Paternity of India's 'Licence-Permit Raj,' 77 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 403, 403 (2016), https://www.jstor.org/stable/10.2307/26552665 (last visited Jan 21, 2023).

[21] Id. at 404.

[22] GOVERNMENT OF INDIA, DEPARTMENT OF COMMERCE, ADMINISTRATIVE INTELLIGENCE ROOM, STATISTICS RELATING TO INDIA'S WAR EFFORT (1947), https://nla.gov.au/nla.obj-51156611/view?partId=nla.obj-51157649#page/n9/mode/1up (last visited Feb 20, 2023).

[23] *Roy, supra, at 3.*

exchange regulation came through the suggestions of A. D. Gorwala Committee report in 1951.[24] This report noted the inefficacy of the 1925 Bombay legislation as it only declared transactions outside a recognised stock exchange as merely void and not illegal.[25] Moreover, the 1925 legislation was narrow and applied only to forward transactions.[26] The report, thus, highlighted the importance of the institution of a comprehensive law catering to regulation of stock exchanges in which both external and internal controls existed.[27] Thus, the Securities Contracts (Regulation) Act, 1956 was instituted to provide control for securities trading and for regulating the affairs of stock exchanges and to prevent undesirable transactions in securities.[28] In the 21st century, the Harshad Mehta scam, spearheaded the revolutionizing of the stock exchanges in India which underwent corporitisation and demutualisation from 2002- 2004.[29] Thus, successive policy and legislative reforms coupled with deregulation, internationalization

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[24] REPORT OF THE COMMITTEE ON PROPOSED LEGISLATION FOR THE REGULATION OF STOCK EXCHANGES AND CONTRACTS IN SECURITIES, http://indianculture.gov.in/reports-proceedings/report-committee-proposed-legislation-regulation-stock-exchanges-and-contracts (last visited Apr 21, 2023).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] Sanjeev Mittal, The India Securities Market: An Overview, 5 (2007), https://effulgence.rdias.ac.in/user/article_pdf/Article_2_vol_5-2.pdf.

[29] Sandeep Goel, Demutualisation of Stock Exchanges in India: The Corporate Governance Chapter, in MANAGING IN RECOVERING MARKETS 241(2015); Prakhar Harit, From Mutual Association to Demutualisation: A Paradigm Shift in the Ownership and Governance of Stock Exchanges in India, AJEF (2020), http://dx.doi.org/10.2139/ssrn.3690140 (last visited Mar 24, 2023).

and innovation and modernization have accelerated the pace of change in stock exchanges and equity markets in India.

The importance of stock exchanges

According to Webster's dictionary, a stock exchange is a place where trading in different securities take place on an organized system.[30] Stock exchanges serve a legitimate function of catering to the larger public interest by providing an organized forum and service in the marketing of securities between buyers and sellers.[31] Stock exchanges are agents and facilitators for entrepreneurial progress. Businesses constituted in the form of a company have the ability to raise colossal quantum of finance than any business constituted in the form of partnerships or proprietorships. This is because for proprietors and partners would find it difficult to get investors for an entire or part of the business. Whereas, in corporations, one finds that for channelizing of finance, there is the participation of a large number of investors. The ease of investment in corporations is through the mechanism that enables investors to purchase or sell their securities as and when they wish. This is the reason why big enterprises can raise capital from the public at large. Hence, the division of ownership and capital of a company into shares such that small savings in the economy are mobilized into business ventures.[32] Stock exchange is the institution where this buying and selling of shares occur. The

[30] Stock Exchange, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/stock+exchange (last visited Oct 29, 2022).

[31] *Supra note 22.*

[32] V. RAGHUNATHAN & PRABINA RAJIB, STOCK EXCHANGES, INVESTMENTS AND DERIVATIVES: STRAIGHT ANSWERS TO 250 NAGGING QUESTIONS (3 ed. 2007).

activities in the stock exchanges constitute the stock market or the security market.[33]

Stock exchanges also serve certain basic functions such as determining the fair price, facilitating industrial advancement, protecting investors' interest, acting as secondary markets, reducing the dependency on loan for corporates. According to some writers the most important economic functions of a stock exchange are to handle transactions with reasonable speed at reasonable cost, find the two sides of a trade, produce the price or price discovery.[34] Price discovery is for the public benefit. There is a great importance to an exchange produced price as there are numerous uses to which a discovered price is applied to.[35] It helps not only the participants in trade but also to great number of people. The price discovery is important for marking-to-market, derivative pricing, valuations of mutual fund cash flow etc.[36] An economist would state that a public good is served through an exchange produced price.[37]This is because a wide range of beneficiaries are involved in the functioning of an exchange but who are not themselves participating in the transactions.[38]Some authors have compared this phenomenon to a lighthouse image because an exchange-discovered price shines light on the value of shares for the broad

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[33] *Id.*

[34] THE ECONOMIC FUNCTION OF A STOCK EXCHANGE, (Robert A. Schwartz, John Aidan Byrne, & Lauren Wheatley eds., 2015).

[35] THE UN CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) AND THE WORLD FEDERATION OF EXCHANGES (WFE), The Role of Stock Exchanges in Fostering Economic Growth and Sustainable Development, (2017),https://sseinitiative.org/wp-content/uploads/2019/12/WFE-UNCTAD-Exchanges-Growth-and-Sustainable-Development.pdf.

[36] *Id.*

[37] *Id.*

[38] *Id.*

public. For instance, Robert A. Schwartz states through his figment of literary comparison that an exchange is like a lighthouse throwing its beam of light such that any ship passing in the night can see. He says, "an exchange-produced price shines light on a stock's valuation that is used for multiple purposes that lie outside the trades themselves. These include marking- to-market, derivatives pricing, estate valuations, and converting mutual fund cash inflows (redemptions) into shares (cash)."[39]Two characteristics that add uniqueness to exchanges around the world are – its non-discriminatory nature and transparency. Transparency is achieved as assets are traded on the exchange which are handled on a daily basis. Another important function of an exchange is to provide infrastructure, market data, or the price, and a regulatory environment for the fair and orderly trading of securities.

Michie's account on the more pertinent functions of a stock exchange is useful.[40] They are: ability to provide liquidity and marketability to existing securities, *i.e.,* a stock exchange provides the platform for investors to disinvest and reinvest. Next important function is aiding in Pricing of Securities for trading which are determined by the forces of demand and supply.[41] Another function is that the legal framework oversees that stock exchanges give safety of transactions and a safe and fair deal in securities market.[42] There is also a pivotal function of a stock exchange in contributing to the country's economic growth through the process of disinvestment and reinvestment, whereby savings can be turned into investment avenues. This

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[39] Robert A. Schwartz, Dark Pools, Fragmented Markets, and the Quality of Price Discovery, JOT (2010).

[40] R.C. MICHIE, THE LONDON AND NEW YORK STOCK EXCHANGES: 1850-1914 (1987).

[41] *Id.*

[42] *Id.*

inevitably leads to capital formation and economic growth.[43] Stock exchanges help in spreading of an equity culture.[44] Stock exchanges providing scope for speculation within the limits of the legal regulations *i.e.,* in a restricted and controlled manner. Stock exchange emphasize on a variety of compliance and reporting with the regulator thereby aiding in progressing the company's performance. Stock exchanges are instrumental in raising capital.[45]

Sustainability in the business ecosystem and the way to sustainable stock exchanges

There is a growing sustainability imperative in recent times reflected in the corporate governance philosophies also.[46] The sustainability efforts are often weaved into the fabric of day-to-day business operations.[47] Businesses if not properly checked can undermine the social and economic stability which can impact the long-term viability in the markets. Hence, promoting sustainable corporate governance is the need of the hour. Some of the hard-hitting challenges in corporate governance are issues such as financialization,

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[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] Colin Myers & Jason J. Czarnezki, Sustainable Business Law? The Key Role of Corporate Governance and Finance, 51 ENV'T L 991 (2021), https://www.jstor.org/stable/48647568 (last visited Mar 24, 2023).

[47] Irina-Eugenia Iamandi et al., Profiling the Sustainability of Stock Exchanges at Global Level through an Optimal Scaling Process by Applying CATPCA, ECON (2020), https://www.researchgate.net/publication/345415937_Profiling_the_Sustainability_of_Stock_Exchanges_at_Global_Level_through_an_Optimal_Scaling_Process_by_Applying_CATPCA (last visited Mar 24, 2023).

excessive risk-taking and cost externalization.[48] Sustainability of corporate operations is needed to have coherent and normatively desirable framework for evaluating prevailing modes of corporate governance.[49] As early as 1987, United Nations bought out the 'Report of the World Commission on Environment and Development - Our Common Future', known as the Brundtland Report, wherein sustainability was understood as aims to ensure that humanity "meets the needs of the present without compromising the ability of future generations to meet their own needs". [50]This included a three-tier challenge at the levels of environmental, social, and economic. Corporate social responsibility can be said as an off-shoot from the sustainability narrative such that it shows that it is "business case" for sustainability. In short, corporate sustainability is about business involving in value creation through (i) environment sustainability (*i.e.,* preserving ecosystems that support human life), (ii) social sustainability (taking care of human rights, social rights, employee welfare etc.), and (iii) economic sustainability (stable and resilient societies).[51]

History of the market sustainability started with the movement of 'Socially Responsible Investing'(SRI) as early as the beginning of the eighteenth century. The Quakers, the protestant Christians constituted the 'Religious Society of Friends' made an embargo that they shall not participate in the

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[48] CHRISTOPHER M. BRUNER, Corporate Governance Reform and the Sustainability Imperative, YALE LAW J (2022).

[49] *Id.*

[50] WCED Sustainable Development Knowledge Platform, https://sustainabledevelopment.un.org/milestones/wced (last visited Dec 20, 2022).

[51] *Bruner, supra, note 48.*

slave trade.[52] In the 1960's socially responsible investing started around the Vietnam War wherein the activists demanded boycotting of companies which aided in weapon supply for the war, and the demand from students was that university endowment funds should not be invested in defense contractors.[53] Socially responsible investing is the act of investing money in funds and companies which inherently have positive social impacts.[54] It is an investment that combines financial returns with social good.[55] Similarly, it disdains investments in corporations that produce or sell addictive substances or activities which are considered a nuisance to the society such as alcohol, abusive substances, tobacco etc.[56] The need is to favor investment in companies that are engaged in social justice, environmental sustainability, and alternative energy/clean technology efforts etc.

In 2004, another significant development spurted through 'Who Cares Wins (WCW)' initiated by the UN Secretary General and UN Global Compact in

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[52] Benjamin J. Richardson, Keeping Ethical Investment Ethical: Regulatory Issues for Investing for Sustainability, 87 J BUS ETHICS 555 (2009), https://www.jstor.org/stable/40294945 (last visited Mar 22, 2023).

[53] Amanda Glincher, CNote | The History of Socially Responsible Investing, CNOTE (2019), https://www.mycnote.com/blog/the-history-of-socially-responsible-investing/ (last visited Dec 20, 2022).

[54] KAREN WENDT, SOCIAL STOCK EXCHANGES: CATALYST FOR IMPACT INVESTING? 42 (2022).

[55] ALBERTO BURCHI ET AL., Sustainable and Responsible Investments: Same Sea, Different Fishes?, in SOCIALLY RESPONSIBLE INVESTMENTS: THE CROSSROADS BETWEEN INSTITUTIONAL AND RETAIL INVESTORS 101 (2019).

[56] Socially Responsible Investment (SRI), CORPORATE FINANCE INSTITUTE, https://corporatefinanceinstitute.com/resources/esg/socially-responsible-investment-sri/ (last visited Apr 4, 2023).

association with the Swiss government.[57] Twenty-three financial institutions collectively having more than US$6 trillion in assets participated. The International Finance Corporation and the World Bank Group endorsed the initiative. A series of a series of events were conducted from 2004-2008 under the UN leadership which facilitated dialogue between asset managers, investment professionals, investment researchers and companies, institutional asset owners etc. on Environmental Social Governance issues. [58]

Another seminal report of the United Nations in ensuring fiduciary duties of the market participants dates to 2005 when the 'Freshfields Report,'[59] was commissioned by the United Nations Environment Programme Finance Initiative (UNEP FI) produced for the Asset Management Working Group of UNEP Finance Initiative. The report highlighted that there are very important fiduciary duties, *i.e.,* the duty to act prudently and the duty to act in agreement with the object for which investment authorisations are granted, which is also understood as the duty of loyalty.[60]

In 2016, the Principles for Responsible Investment (UNPRI or PRI), a United Nations supported international network of financial institutions formed for

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[57] INTERNATIONAL FINANCE CORPORATION: WORLD BANK GROUP, Who Cares Wins, 2004–08, https://documents1.worldbank.org/curated/en/444801491483640669/pdf/113850-BRI-IFC-Breif-whocares-PUBLIC.pdf#:~:text=Who%20Cares%20Wins%20%28WCW%29%20was%20initiated%20by%20the,World%20Bank%20Group%20were%20among%20the%20endorsing%20institutions.

[58] *Id.*

[59] Freshfields Bruckhaus Deringer LLP (informally Freshfields, or FBD) is an international law firm headquartered in London was instrumental in bringing out the report.

[60] UNEP FINANCE INITIATIVE, A legal framework for the integration of environmental, social and governance issues into institutional investment, (2005).

enforcing its six aspirational principles, which are often referred to as 'the Principles', highlighted how the incorporation of ESG parameters into investment methods and decision making is quintessential for regulatory framework.[61]

The transition from SRI to ESG and finally to impact investment (discussed hereunder) shows that there has been a continuous and an evolving trend to ensuring sustainability in the business environments world-over, be it in investment practices or corporate governance methods of companies. The impact investment is realized through Social Stock Exchanges(SSE) which are stock exchanges that offer a platform on which social enterprises, Non-governmental Organsiations (NGO's), altruistic volunteer groups and welfare organisations are listed so that money can be raised for the welfare of the society and the underprivileged.[62] Impact investments are investments made into businesses with the object of harnessing a clear economic, social and environmental impact.[63]In fact, an emerging theme in business is 'Social entrepreneurship' which study evaluated social value, social performance and effect of social projects.[64]

The international efforts in ensuring sustainability of stock exchanges are worth mentioning. United Nations have pioneered the Sustainable Stock

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[61] Fiduciary duty in the 21st century final report, PRI, https://www.unpri.org/fiduciary-duty/fiduciary-duty-in-the-21st-century-final-report/4998.article (last visited Jan 20, 2023).

[62] Adhana, D. (2020). Social stock exchange: An innovative financing platform for social Enterprises in India. SSRN Electronic Journal. https://doi.org/10.2139/ssrn.3619235.

[63] *Id.*

[64] Simone Vasconcelos Ribeiro Galina, Perla Calil Pongeluppe Wadhy Rebehy, Luisa Margarida Cagica Carvalho & Maria Teresa Gomes Valente da Costa, Determinants of Attractiveness in Social Stock Exchange, 3 J. MGMT. & Sustainability 157 (2013).

Exchange Initiative(SSE) for promoting corporate investment in sustainable development.[65] It is a partnered project of the United Nations co-organized by the United Nations Conference on Trade and Development (UNCTAD), the United Nations Global Compact, the United Nations Environment Programme Finance Initiative (UNEP-FI) and the UN-supported Principles for Responsible Investment (PRI).[66] In 2018, the UN Stock Exchange Initiative(SSE) brough out the report on how regulators can help in achieving sustainable development goals.[67]The report deliberated five main action areas for the regulators to work on. They are:-(i) Strengthen disclosure *i.e.,* improve the quality and quantity of disclosure of environmental and social data, (ii)facilitate investment *i.e.,* aid investment flows towards achieving the SDGs via -financial products, (iii) clarify duties *i.e.,* to guide investors on the integration of sustainability into their decisions, (iv) Strengthen governance *i.e.,* introduce board responsibilities related to environmental and social factors and (v) to build capacity *i.e.,* facilitate the training of market participants on sustainability topics.[68] Five supporting actions were also charted out for the regulators.They are :- analysis *i.e.,* (i) to analyse the factors that influence the ability of market actors to support the SDGs, (ii) roadmaps *i.e.,* produce or support the development of national or regional plans for sustainable finance, (iii) Sharing *i.e.,* to exchange experiences with other securities regulators, and learn from the experiences and practices of others,

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[65] About | Sustainable Stock Exchanges, https://sseinitiative.org/about/ (last visited Jan 11, 2023).

[66] *Id.*

[67] UN SSE, How securities regulators can support the Sustainable Development Goals, A sharing of experiences, (2018), https://sseinitiative.org/wp-content/uploads/2018/10/SSE-Regulator-Report-compressed.pdf

[68] *Id.*

(iv) standards *i.e.,* to work with the relevant international or regional bodies to implement standardised guidelines or frameworks and (v) collaboration *i.e.,* to work with other entities to align efforts in support of the SDGs.[69]

The UN SSE Initiative 2018 report highlighted a positive trend in ESG compliance by a growing figure of stock exchanges around the world. The figure below extracted from the report indicates the same.

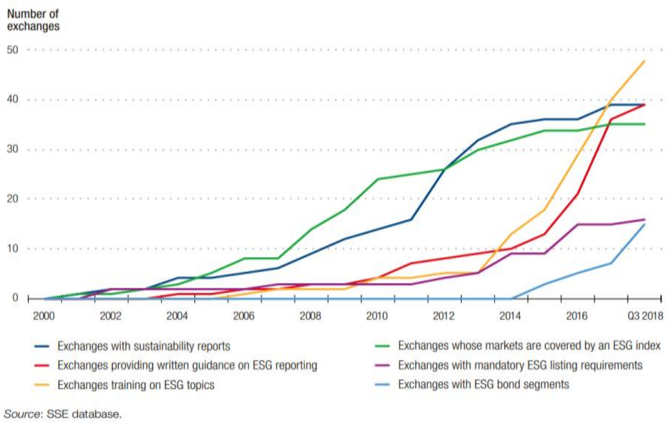

Figure 1: Stock exchange-related sustainability activities
Source: SSE database

The report identified that stock exchanges across the world are gravitating towards to promoting improved ESG practices among their issuers. The International Organization of Securities Commissions (IOSCO) as per its 2017 report also mandates that the securities regulators to abide by the three

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[69] *Id.*

core objectives: (i) to protect investors; (ii) To ensure that markets are fair, efficient and transparent; and (iii) to reduce systemic risk.[70]

Thus, evidence shows that the investment and market consciousness for sustainability has increased manifold in recent times.

Social stock exchanges: a catalyst for sustainable investment

While stock exchanges allow a variety of products to be traded, a new type of stock exchange is gaining social recognition- Social Stock Exchange (SSE). Social Stock Exchanges are a new socio-economic phenomenon that allow social and green businesses to raise capital. Investors are interested to invest in businesses which are ethical and has value generation. An SSE provides a liquid marketplace having transparent price building mechanisms. The philosophy behind an SSE is that it addresses very pertinent societal and environmental challenges which United Nations have emphasized through the United Nations Sustainable Development Goals (UNSDGs), 2015.The United Nations General Assembly formulated the UNSDGs in succession to the Millenium Development Goals that ended in 2015. The UNSDGs adopted in a resolution called the 2030 Agenda. The UNSDGs urge all nations to promote prosperity and abundance by protecting the planet. It stresses *inter alia* on economic growth, ending poverty, environmental protection etc..[71]

What sustainable stock exchanges provide is that they help enlist companies that have an impact investment. To understand impact investment, it is to be known that there are corporations that proactively integrate social or

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[70] THE INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS, Objectives and Principles of Securities Regulation, (2017).

[71] THE 17 GOALS | Sustainable Development, https://sdgs.un.org/goals (last visited Jan 10, 2023).

environmental return within a business model and investment strategy. The corporation/company uses a lock-step[72] approach for achieving this goal, *i.e.,* impact generating element cannot be separated from the business strategy or the products as it is a vital element of the product and the strategy itself.[73] It is as if the impact element is weaved into the DNA of the business of the enterprise and its product line.[74] The impact assessment is different from the Environment Social Governance criteria of companies. The impact assessment uses strategy *ex-ante* instead of filtering and mitigating undesired impacts of a business model *ex-post*.[75] ESG, on the other hand, is most of the time *ex-post* reporting and measurement of the reporting success.[76] For example, Tesla has horizon 3 innovation products which involve long-term innovation projects and was the highest performing automaker in 2020 in respect of its turn-over, total sales, long-term shareholder value.[77] Tesla has filed a patent application for its innovative process of extracting lithium from clay material. Thus, in an era where battery cars become the norm making lithium resources crucial, Tesla's advanced technological innovation gives a product that has a positive impact. This shows that impact investing is directed to unravel an environment or societal problem using market mechanisms including innovation and product and strategy design.[78]

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[72] Also known as the double-bottom-line approach.

[73] Wendt, supra, note 54.

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] Nathan Furr & Jeff Dyer, Lessons from Tesla's Approach to Innovation, HARVARD BUSINESS REVIEW, Feb. 2020, https://hbr.org/2020/02/lessons-from-teslas-approach-to-innovation (last visited Nov 19, 2022).

[78] Wendt, supra, note 54.

In India, the institutionalization of SSE began in July 2019, when the Hon'ble Finance Minister Mrs. Nirmala Sitaraman, as part of Budget Speech for FY 2019-20 proposed social stock exchanges to elevate capital, through equity, debt, mutual funds, for businesses with the aim of fostering social welfare.[79]

The social stock exchange is to be regulated by the capital market regulator, the Securities and Exchange Board of India (SEBI) which shall regulate social enterprises and voluntary organisations to be listed in stock exchanges. For this, SEBI constituted a working group on 'Social Stock Exchanges' (SSE) under the Chairmanship of Shri Ishaat Hussain (Director, SBI Foundation; Ex-Director (Finance) Tata Sons Limited).[80] A report was submitted in June 2020 that charted a complete approach for setting up of Social Stock Exchanges. The report identified a list of eligible social objectives which *inter alia* includes eradicating hunger, poverty malnutrition and inequality; promoting health care and sanitation; and making available safe drinking water, promoting education, promoting gender equality, women empowerment etc..[81] The aim of listing is to support the flow of funds and enabling fundraising structures.[82] The report reminded that the variety of institutions in the altruistic services are clothed legally in many fashions such company(for-profit or section 8 company), society, trust, partnership etc.

[79] Framework for Social Stock Exchange, WWW.SEBI.GOV.IN, https://www.sebi.gov.in/sebi_data/meetingfiles/oct-2021/1633606607609_1.pdf (last visited Apr 4, 2023).

[80] SEBI, Comments on the report submitted by the Technical Group on Social Stock Exchange, (2021), https://www.sebi.gov.in/reports-and-statistics/reports/may-2021/technical-group-report-on-social-stock-exchange_50071.html.

[81] *Id.*

[82] *Id.*

Without discriminating in form, it is necessary to give these institutions also access to listing in Social Stock Exchanges.[83]

A pivotal change in the regulatory landscape for listing in social stock exchanges occurred when on 25th July 2022, SEBI carried out the Fifth Amendment Regulations 2022 to the LODR (Listing Obligations and Disclosure Requirement) Regulations 2015, with a view to facilitate operationalisation of social stock exchanges.[84] The amendment was based on the recommendations of the Technical Group on Social Stock Exchange. A new chapter IX-A has been introduced titled as 'obligations of social enterprises.[85] Provisions have been affected for listing social enterprises, voluntary organisations and philanthropic organisations which focus on eligible social objectives for the underserved or less privileged populations or regions. Amendments were also made in definition clauses to include terms - 'For Profit Social Enterprise', 'Not for Profit Organization', 'Social Enterprise', 'Social Stock Exchange'. The social enterprises eligible for listing are enterprises whose objective is social. This does not mean that the enterprise does not have pursuits of profit but that its primary goal is social service. Impact investment is the investment made into businesses with the aim to make a noticeable social, environmental and economic influence.

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[83] *Id.*

[84] SEBI | Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022, https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2022_61169.html (last visited Sep 25, 2023).

[85] *Id.*

The regulator has also made parallel amendments in Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, with insertion of a new chapter X – 'Social Stock Exchange'.[86] Similarly, amendments to institute the social stock exchanges were also made to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.[87] Further, on 19th September 2022, SEBI issued a detailed framework prescribing the minimum requirements to be followed by a Not-for-Profit Organisation (NPO) that desires to be registered/listed on an SSE.[88]Thus, all these changes have made the present regulatory framework on Social Stock exchanges more comprehensive as now a variety of institutions with social objectives can approach for listing.

Concluding observations

The prime reason for social stock exchanges is to increase massive investments to meet human development goals which task the Government constrained by resources cannot achieve on its own. Moreover, there are a variety of investors with different investment aptitude and inclinations in the

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[86] SEBI | Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 [Last amended on July 25, 2022], https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-july-25-2022-_61425.html (last visited Apr 5, 2023).

[87] SEBI | Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 [Last amended on July 25, 2022], https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-alternative-investment-funds-regulations-2012-last-amended-on-july-25-2022-_61452.html (last visited Apr 5, 2023).

[88] SEBI | Framework on Social Stock Exchange, https://www.sebi.gov.in/legal/circulars/sep-2022/framework-on-social-stock-exchange_63053.html (last visited Apr 2, 2023).

market who are motivated to invest in something altruistic, rather than with a mere profit motive. For instance, the Forbes Magazines reported in 2014 on the increasing trend in investments in social stock exchanges world over.[89]

Social Stock exchanges are also a boon in the sense that new methods of fund-raising are geared up to the eco-social entrepreneurs. The Social Stock Exchange in London (UK), works connecting social enterprises with potential investors.[90] These entrepreneurs will not be ridden with outdated categories and schemes such as the demand for more bank guarantees, proving credit worthiness based on track record etc. India's social enterprises network is steadfast increasing, and in survey conducted by the British Council, it was found that in India, 57 per cent of the social enterprises opined that access to debt or equity is a huge barrier to growth and sustainability.[91] An SSE assures social enterprises constituted in any manner without discrimination (trust, society, company) access to capital, making the act much affordable by standardization of the process. It removes the need to engage and negotiate directly which could have been cumbersome and ineffective.

The trend towards establishment of social stock exchanges shows a cultural adaptation of the financial communities, legal frameworks, accounting and political communities. It is to be noted that as per OECD, 2014, the creation

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[89] *Wendt, supra, note 54.*

[90] Indulekha Aravind, Social Stock Exchange: Will It Improve Access to Capital for Social Enterprises?, THE ECONOMIC TIMES, Jul. 7, 2019, https://economictimes.indiatimes.com/markets/stocks/news/social-stock-exchange-will-it-improve-access-to-capital-for-social-enterprises/articleshow/70108595.cms (last visited Mar 25, 2023).

[91] *Adhana, supra, note 62.*

of SSEs is an "expensive and long-term market building venture."[92] The advent of SSEs showcases a significant feature of the development of the market going through a process of broad and institutional development. Another reason as to why social stock exchanges are appealing to the public is that these exchanges are based on an innovative financial model which is based not only on charitable objectives but also, significantly, built on transparency which enables a better decision-making process for the investors. This fosters investor confidence which is cornerstone for financial investments.

It is true that the capital market regulator, the Securities and Exchange Board of India has made pathbreaking changes in the legislative and regulatory landscape for institution of social stock exchanges. SEBI has thoroughly vetted the nitty-gritty of access to social stock exchanges by making sufficient avenues and laws. This reformation was done as access to capital markets comes with its own responsibilities to the public, an uncompromised transparency, enhanced disclosure, assurance on impact assessments and accountability to the investors. The changes reflect that adequate safeguards in Social Stock Exchange framework have been put in place, such as prescription of previous track record, no prior debarment to access capital markets, details in offer documents and other disclosures etc.

However noble as the object of facilitating investment through Social Stock exchanges are concerned, there are certain glaring challenges for the success of an SSE. Given the investment taste of the people, it is doubted how attractive impact investment and impact funding would sound to the bulk of ordinary investors whose main aim is directed to achieving profits from

[92] *Wendt, supra, note 54.*

investment in big corporations with high turn-over. The definition of social enterprise has been consciously kept broad which can create nuances in interpretation and allow even ineligible participants to reap benefits under the guise of social service. There is a lack of clarity about how a stock exchange will help raise capital for "voluntary organizations". If section 8 companies are permitted to listing, it might open doors to underserving institutions such as a private school whose sole objective is money minting.

There are also some hurdles in respect of the minimum requirements prescribed by SEBI. For example, a Not-for-Profit Organization is required to satisfy minimum number of years of existence, criteria of minimum fund flow etc., but it is doubtful how a freshly established NPO would be able to meet the funding standards. Moreover, preparation of the detailed compliances and disclosures in the offer/final document, Audited Annual Impact Report (AIR) are cumbersome processes that require time and services of a variety of professionals which may be a little impossible for new NPOs, NGOs and social enterprises wishing to get listed in an SSE. The technical group constituted by SEBI recommended corpus of 100 crore rupees capacity building initiatives[93] as rigorous training is required for all stakeholders to be well-versed in the functioning of an SSE and it is high time to fasten the same.

However, it is true that an applaudable shift in investment jurisprudence have been definitely achieved through the changes brought in the legislative landscape of the impact investment through social stock exchanges. However, the new mechanism can only reap meaningful benefits only if education, training and awareness is promoted by the regulator among the masses.

[93] Social Stock Exchange, 8 (2021), https://www.icsi.edu/media/webmodules/publications/fcb/e-bulletin_exe_September_2021.pdf (last visited Mar 4, 2023).

Government can incentivize investment in social stock exchanges through income tax exemptions. Even though there are different schemes of the government to support social businesses, much needs to be done in this regard so as to promote them. It is reiterated that social finance is a significant aspect of the financial system having considerations for allocation of resources, capital formation, taxing etc. and concerted efforts to boost the same is required. India being rooted in socialism already has an arduous task of empowering more than a billion people in all fields such as health, education, nutrition, employment etc. This cannot be accomplished exclusively under the government policies, schemes or traditional commercial capital. This is the reason why more than 3.2 million NGO's[94] and philanthropic organisations flourish in India. Hence, the present avenues of Social Stock Exchanges for these organisations to contribute to the social finance is commendable.

[94] Social Stock Exchange, 8 to 17 (2021), https://www.icsi.edu/media/webmodules/publications/fcb/e-bulletin_exe_September_2021.pdf (last visited Mar 4, 2023).