ESG OBLIGATIONS AND CORPORATE ACCOUNTABILITY IN INDIA: FROM DISCLOSURE TO ENFORCEMENT, ADDRESSING GREENWASHING AND THE FRAUDULENT MISREPRESENTATION GAP

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ABSTRACT

A paradigm shift is sweeping through the global corporate governance system and replacing the primacy of shareholders with a multi-stakeholder system based on the principles of Environmental, Social, and Governance (ESG). Securities and Exchange Board of India (SEBI) has ensured this transition in India by the required Business Responsibility and Sustainability Reporting (BRSR) and by the improved BRSR Core framework. Though the listed companies have been considerably expanded to disclose ESG obligations through these reforms, they have also been faced with a critical lack of enforcement. The ESG regime of India is still more or less disclosure based which allows the sustainability claims of greenwashing i.e. companies create overstated, biased or unproven sustainability reports without taking real steps to support them, eroding investor confidence, integrity of markets and trust of stakeholders.

The paper focuses on the increasing gap between the ESG disclosure requirements and corporate responsibility in India, and frames it as a scheme of fraudulent misrepresentation gap in the current legal framework. The study is based on a doctrinal examination of the Companies Act, 2013, SEBI (LODR) Regulations, consumer protection law, and regulatory requirements regarding the issue of greenwashing, to assess the extent to which the traditional doctrines of fraud, misrepresentation, and fiduciary duty can be applied to address any deceitful ESG claims. It claims that the current enforcement provisions are inadequate to the qualitative and prospective aspects of ESG disclosures, which has enabled the possibility of misleading sustainability statements to be regarded as non-binding corporate puffery.

Based on the comparative insights gained through the models of enforcement in the European Union and the United States, the paper suggests a change towards a model of symbolic compliance with the ESG principles, to a model of legal accountability, and recommends specific reforms to make sure that the sustainability transition in India becomes based on verifiable corporate integrity and not on the artificiality of reputational discourses.

Keywords: ESG Obligations, Greenwashing, BRSR Core, Corporate Accountability, Fraudulent Misrepresentation, Fiduciary Duties, SEBI Regulations, Class Action Suits.

INTRODUCTION

Current conceptualization of corporate governance has been shifted conclusively out of the previous doctrine of shareholder primacy to a newly formed stakeholder-focused paradigm, in which Environmental, Social, and Governance (ESG) factors have taken a dominant role in regulatory compliance, investment policy, and corporate valuation on an international scale.[1] ESG disclosures are becoming more consulted by investors, lenders and consumers to judge long-term systemic risk and thus making previously voluntary and existing responsibilities a market-based imperative.[2] The 2021 Business Responsibility and Sustainability Reporting (BRSR) framework created by the Securities and Exchange Board of India (SEBI), followed in 2023 by BRSR Core, makes top 1,000 listed companies in India report over 140 parameters such as value-chain emissions, workforce diversity or governance practices with requirements of assurance imposed on the largest companies.[3] This is a break in the voluntary corporate social responsibility (CSR) provisions of the Companies Act, 2013 (Sections 134 and 135) to a data-heavy, statutory sustainability regime that will bring India into the international environment and thus draw ESG-based foreign investment.

This scheme, however, which is reporting-heavy and accountability-light, does display structural anomalies.[4] Disclosure in itself is not a guarantee of accuracy or substantive compliance, but it is an anticipation of narrative embellishment in place of measurable outcomes, which makes greenwashing easier, exaggerated and misleading statements about environmental or social performance with the aim of gaining reputational advantage.[5] Indeterminate net-zero-related promises, selective reporting measures, aspirational sustainability disclosures are causing an indistinct boundary between acceptable and

[1] R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (1984).
[2] Jill E. Fisch, *The Trouble with ESG Investing*, 100 Tex. L. Rev. 1, 6–10 (2022).
[3] Securities & Exch. Bd. of India, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021).
[4] Luca Enriques & Matteo Gatti, *The ESG Illusion*, 46 Bus. L. Rev. 1, 8–12 (2021).
[5] Org. for Econ. Coop. & Dev., *ESG Investing and Climate Transition* 27–31 (2020).

unacceptable communication and enable the practice of deceit, which undermines market integrity and investor confidence.

SEBI advisories and the Autonomous Systems of Corporate Integrity (ASCI) guidelines which can be seen as regulatory reactions to the problematic nature of these disclosures do not create deterrence without the clearly defined liability standards.[6] The current doctrines such as the Companies Act, Section 166(2) that implicates the directors in the communal and environmental responsibility are inadequate in the application context of future-looking and more qualified ESG measures, making it difficult to determine the intention, dependency, causal relationship, and damage. In line with this, the "fraudulent misrepresentation gap" allows making disclosures and reality uncoupled, in particular, in the case of the lack of standardized green taxonomies, or ESG-related penalties.

This paper therefore carries out a doctrinal and policy review of BRSR requirements, fiduciary, securities laws, and consumer laws to examine their effectiveness in preventing greenwashing. Using EU and US equivalents that operationalise operationalised ESG accountability, the article contends that a re-calibration of current systems of operationalised symbolic compliance to operationalised enforcement is necessary through the definition of statutory frauds, the establishment of well-structured assurance mechanisms, director liability, and coordinated enforcement.[7] These changes would bring sustainability ambition and legal certainty, market transparency and stakeholder protection, to support the Indian ESG discourse in line with the G20 expectations.

1. ESG AND THE CORPORATE GOVERNANCE METAMORPHOSIS

1.1 ESG as an Emerging Alternative of Corporate Governance

In the past, the doctrine of shareholder primacy prevailed in the area of corporate governance, placing profit maximisation, and wealth of shareholders in the forefront over the interests of the general society.[8] This paradigm has experienced a significant shift in the past ten years, leading to an emergence of a stakeholder-based approach of governance that lies in the

[6] Advertising Standards Council of India, *Guidelines for Environmental/Green Claims* (2022).
[7] Regulation (EU) 2020/852 of the European Parliament and of the Council (Taxonomy Regulation); Group of Twenty (G20), *Sustainable Finance Roadmap* (2021).
[8] R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (1984); Lynn A. Stout, *The Shareholder Value Myth*, 76 Brook. L. Rev. 1189, 1192–96 (2011).

Environmental, Social, and Governance (ESG) premises. ESG rests corporate responsibility by acknowledging the fact that the long-term corporate value is inherently associated with environmental sustainability, social equity, and good governance practice as opposed to the short-term financial performance.

In this paradigm, ESG issues have become determinant scores to a wide range of stakeholders. Institutional investors also are more and more using ESG reporting to evaluate non-financial risks like climate exposure, labour practices and governance failures, which have a direct effect on portfolio stability and returns. so too are lenders integrating sustainability performance into credit risk rating, and consumers and supply-chain partners using sustainability claims to drive their purchasing and contracting behaviour. As a result, ESG has ceased being a reputational issue and adopted a central decision-making instrument that can determine the ability to access capital, the presence in the market, and competitiveness of corporations.[9]

The increasing role of ESG in corporate valuation also highlights the role of ESG in governance. The scores of ESG and sustainability indices currently have an impact on share prices, cost of capital and mergers valuation, and consequently, ethical and environmental behaviours have been converted into financial implications. This kind of market sensitivity too generates incentives to overstate of falsify their own ESG credentials and establishes the foundation of governance distortions like greenwashing.[10]

1.2 Indian ESG Trajectory

The process of ESG development in India is an indication of slow but resolute transition between voluntary corporate responsibility and compulsory sustainability governance. Companies Act, 2013 brought CSR as a mandatory requirement, which marked an early understanding of corporate social responsibility. 5, however, CSR was a spending-driven, philanthropic approach that was not tied to fundamental business activities and risk management.[11]

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[9] Jill E. Fisch, *The Trouble with ESG Investing*, 100 Tex. L. Rev. 1, 6–12 (2022).
[10] Florian Berg, Julian F. Kölbel & Roberto Rigobon, *Aggregate Confusion: The Divergence of ESG Ratings*, 64 Rev. Fin. Stud. 1, 3–8 (2022).
[11] Companies Act, 2013, § 135 (India);
Umakanth Varottil, *Corporate Social Responsibility in India: From Charity to Compliance*, 48 J. Indian L. Inst. 1, 9–14 (2016).

Under the leadership of SEBI, the shift in CSR to ESG was accelerated.[12] This development was the attempt by SEBI to institutionalise ESG as a disclosure-based system of governance of listed companies, which was further strengthened by the BRSR Core in 2023 that mandated quantitative metrics, value-chain disclosed accounts and third-party assurity demands of top-listed companies.[13]

In spite of these regulatory achievements, Indian ESG regime is still structurally uneven.[14] The disclosure requirements have gone up by far, and their liability or enforcement systems are not commensurate. ESG compliance in India is thus typified by elaborate reporting requirements with no straight statutory repercussions to erroneous, misleading and deceptive reporting. This imbalance produces a system of regulation where the ESG requirements are legally binding but formally insignificant in substance.

1.3 Core Problem Statement

The main issue discussed in this paper is the fact that the ESG framework in India is disclosure oriented and lacks enforcement.[15] The regulatory focus on reporting puts an emphasis on the volume of ESG reporting rather than its quality, verifiability and legal responsibility. Without effective checks and balances and penalties specific to ESG, corporate disclosures have more of a symbolic nature than a binding one.

This lack of enforcement has been a factor in the development of greenwashing in Indian corporate. Weak penalties and inconsistent oversight contribute to making the legal risks of such a practice diminished, which makes greenwashing a logical corporate policy and not an exception.

Adding to this issue is the fact that ESG misstatements have no clear legal treatment of being fraudulent or misrepresentative. There is no specific misconduct in deceptive ESG disclosure that is currently acknowledged by the corporate, securities and consumer protection laws. As a result, the deception related to ESG often exists in a grey area of regulation, too abstract to invoke the orthodox fraud laws, and too technical to be judged by the orthodox disclosure

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[12] Securities & Exch. Bd. of India, *Business Responsibility and Sustainability Reporting Framework* (2021).
[13] Securities & Exch. Bd. of India, *BRSR Core – Assurance of Sustainability Disclosures* (2023).
[14] Luca Enriques & Matteo Gatti, *The ESG Illusion*, 46 Bus. L. Rev. 1, 8–12 (2021).
[15] Afra Afsharipour, *Stakeholder Governance and Emerging Markets*, 45 J. Corp. L. 789, 810–15 (2021).

enforcement laws.

1.4 Research Questions

The following research questions will provide directions to this paper:

1. Whether the current Indian corporate and securities laws sufficient to deal with the issue of deception on the basis of misleading ESG disclosures?

2. Whether it is possible to legalize greenwashing in the pre-existing doctrines of fraud, misrepresentation and breach of fiduciary?

3. What regulatory and institutional changes will be required to make ESG disclosures effective enforcement tools of corporate responsibility?

1.5 Methodology

The research is based on the doctrinal research method of law, in which it examines statutory provisions of the Companies Act, 2013, SEBI regulations and consumer protection law.[16] This is complemented with the review of regulatory and policy of SEBI circulars, ESG reporting framework and enforcement guidelines. It uses a comparative legal approach to make inferences on the basis of emerging anti-greenwashing regimes in the European Union and the United Kingdom to subsequently make normative recommendations that would be applicable in the Indian context.[17]

2. THEORETICAL BACKGROUNDS: ESG, CORPORATE RESPONSIBILITY AND THE GREENWASHING

2.1 The ESG Beyond Compliance

The conventional way of seeing ESG is based on the three mutually dependent pillars, which include environmental responsibility, social equity, and governance integrity. Although initial ESG systems passed as soft law or voluntary codes, their modern day role goes much further

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[16] Terry Hutchinson, *Researching and Writing in Law* 7–9 (3d ed. 2010).

[17] Mark Van Hoecke, *Methodology of Comparative Law*, 13 L. & Method 1, 6–10 (2015).

than the compliance checklists.[18] ESG has become an operational risk-based system of governance that incorporates the issue of sustainability in strategizing decisions.

Compared to the CSR, which places emphasis on external social contribution, ESG is integrated into the business operations and governance frameworks of the company. ESG compliance therefore affects the capital placement, enterprise risk management, and long-term corporate sustainability. Even though ESG standards are not statutorily codified, their implications on the market are notable, as they exhibit how the soft law can have hard economic impacts.

2.2 Corporate Accountability in the ESG

The accountability of corporations has its basis on the fiduciary duties of directors and top management in the ESG governance.[19] Directors are now more required to embrace the profit goal alongside the stakeholder interests, environmental management and ethical governance through ESG disclosures that can help the regulators, investors and consumers to assess the corporate behaviour and risk policies.

The disclosure based accountability, however, can only be effective when the disclosures made are accurate, verifiable and enforceable. Where ESG information has an impact on investment and consumer behaviour, the misleading disclosures distort market signals and create a lack of trust. ESG responsibility thus moves beyond the moral duty and gets into the sphere of the law.

2.3 Greenwashing as a Failure of Governance.

Greenwashing can be defined as the tendency to make unsubstantiated or false assertions about the environmental or social performance of a company to intend to give a false impression of sustainability.[20] It can take many different forms, such as generic claims, disclosure of data selectively, and making aspirational promises that have no implementation routes.

More importantly, the issue of greenwashing is not just an ethical failure but a governance failure that is connected to legal practices. Through falsification of ESG performance,

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[18] Cynthia A. Williams & John M. Conley, *Is There an Emerging Fiduciary Duty to Consider Human Rights?*, 74 U. Cin. L. Rev. 75, 92–96 (2005).
[19] Lynn A. Stout, *Bad and Not-So-Bad Arguments for Shareholder Primacy*, 75 S. Cal. L. Rev. 1189, 1201–06 (2002).
[20] Org. for Econ. Coop. & Dev., *Misleading Environmental Claims: The Greenwashing Challenge* 9–13 (2021).

companies weaken investors in the decision-making process, create competition distortions, and impair regulatory credibility. Since ESG reporting is becoming more relevant to financial results, greenwashing should be considered as a form of legal malpractice that can be liable at the corporate and the director level.

3. ESG REQUIREMENTS IN INDIA: THE DISCLOSURE-BASED FRAMEWORK

The ESG regulatory framework of India is based on the disclosure-based compliance as opposed to the substantive liability. The recent reforms have greatly extended the scope of ESG reporting but with no similar enforcement mechanisms provided, a structurally disclosure-heavy and accountability-light regime has been created.

3.1 SEBI Business responsibility and Sustainability Reporting (BRSR)

The Business Responsibility and Sustainability Reporting (BRSR) framework, initiated by the Securities and Exchange Board of India (SEBI) in 2021, is applicable to the top 1,000 listed companies based on market capitalisation,1 and the BRSR Core framework goes on to demand quantitative metrics and reasonable assurance in the case of large listed firms.[21]

Although comprehensive, BRSR regime is mainly based on corporate self-reports.**22** Although disclosure is required by law, verification is made only marginally and regulation is largely reactive. Such dependency on self-certification undermines the deterrence effect of the framework and makes it possible to selective disclosure and narrative-based reporting of ESG.

3.2 ESG -Relevant Companies Act, 2013 obligations.

Companies Act, 2013 establishes the indirect ESG responsibility by directors acting in their fiduciary and CSR responsibilities. Section 166(2) imposes a compulsory requirement on the directors to act in the best interest of the company and its stakeholders and the environment, which represents a legislative acknowledgement of the stakeholder-oriented governance.

Section 135 also requires qualifying companies to expend their CSR.

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[21] Securities & Exch. Bd. of India, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021).
[22] Securities & Exch. Bd. of India, *Business Responsibility and Sustainability Reporting Framework* ¶¶ 5–7 (2021).

Such provisions however are plagued by conceptual and implementation limitations. CSR is a spending mechanism, as opposed to a governance/risk-management framework, and the Act does not specifically identify ESG misstatements as a type of corporate misbehaviour. This means that false sustainability reporting is hardly a reason to invoke director disqualification or legal action.

3.3. SEBI (LODR) Regulations and Market Disclosure

The SEBI (Listing Obligations and Disclosure Requirements), 2015 make listed entities disclose all material information that can potentially impact on the decision making of investors. With the increased use of ESG factors in valuation, investment strategies and access to capital, sustainability disclosures are arguably covered by the category of material information.

However, there are no specific materiality thresholds that relate to ESG, which implies regulatory uncertainty. The few enforcement measures on misleading ESG disclosures can be made, and in this context, businesses are still encouraged to make sustainability statements more of a reputational story than a legally binding statement.

3.4 Weaknesses of Indian ESG Regime Structure

The ESG framework of India has three structural weaknesses. First, statutory interpretation of ESG misconduct or greenwashing does not exist, and relief is only available under general fraud or disclosure law and does not fit well ESG claims.[23] Second, regulation is not well coordinated between SEBI, ministry of corporate affairs and consumer protection agencies leading to poor enforcement. Third, mandatory disclosure is not corresponding to mandatory verification and compliance rituals may replace substantive accountability.

All these gaps together allow a regulatory framework in which the ESG disclosure requirements remain without effective enforcement, allowing the continuation of greenwashing with a light penalty.

[23] Luca Enriques & Matteo Gatti, *The ESG Illusion*, 46 Bus. L. Rev. 1, 18–22 (2021).

4 GREENWASHING: PRACTICES, INCENTIVES, AND CONSEQUENCES IN CORPORATE INDIA

Greenwashing has been created as an endemic impact of the ESG regime of disclosures in India. With increasing exposure of investment flows, corporate valuation, and market access to ESG performance, corporate managers are experiencing a significant motivation to signal sustainability compliance in the project despite a lack of substantive environmental or social change.[24] Weak verification and minimal enforcement of the regulatory focus on reporting has turned greenwashing into a sensible business practice and not an anomaly.

4.1 Corporate Incentives of Greenwashing.

The spread of ESG-based investment vehicles has spawned a fundamental re-assessment of corporate incentives systems. ESG scores are becoming a major tool used by institutional investors and lenders as a primary risk assessment and capital allocation tool, which means that sustainability rhetoric is becoming essential to both financial sustainability and reputational capital. However, because an ESG specific penal regime does not exist and the legal risk of applying those rules in India is low, the firms can enjoy these advantages without the corresponding legal responsibility. This dismatch of reward and responsibility creates a bias whereby symbolic compliance is favored; this is compared to the substantive change.

4.2 Practices of Greenwashing.

Greenwashing often takes the form of vague, aspirational statements like net-zero, eco-friendly, or sustainable growth that lack specifics and goals to be met or timeframes that can be adhered to.[25] business entities are constantly practising selective disclosure, emphasizing positive ESG indicators and downplaying negative effects. Such actions as misleading investor reporting and marketing behaviors further distort the boundary between aspiration proclamation and actual performance with the regulatory loopholes at materiality and verification.

4.3 Impact of Greenwashing

Greenwashing has caused more harm by distorting the decision making of the investors,

[24] Jill E. Fisch, *The Trouble with ESG Investing*, 100 Tex. L. Rev. 1, 6–10 (2022).
[25] European Comm'n, *Guidance on Environmental Claims* 6–9 (2021).

deceiving consumers, and compromising the integrity of sustainable markets.[26] Repeated greenwashing undermines incentives to engage in responsible corporate behavior and undermines the plausibility of ESG as a regulatory system and undermines stakeholder trust in company reports.

5 THE FRAUDULENT MISREPRESENTATION GAP OF ESG DISCLOSURES

Although the investigation of Environmental, Social, and Governance (ESG) disclosures by investors, consumers, and other stakeholders continues to increase, there is no clear coherent doctrine in Indian law concerning deceptive ESG claims.[27] Theoretical provisions of misrepresentation and fraud are in theory represented by traditional regimes of private law, securities regulation and consumer protection, but the conceptual design of these regimes was not designed to reflect the attribute of diffuse, forward-looking, and value-driven ESG assertions. This part shows that the current legal regimes are inefficient to regulate the ESG lies at individual and at collective levels.

5.1 Indian Contract Law - Misrepresentation.

False Statements and Inducement.

Misrepresentation and fraud are actionable under Indian Contract Act, 1872 under - When a party relies on a false statement of fact to sign a contract of a kind, the false statement must be knowingly false and the representation must have a direct connection with persuading the claimant to agree to the contract. Fraud When a party is induced by a false statement to enter into a contract of a type, the false statement must be knowingly so, and must carry with it a direct connection to the persuasion that the claimant agreed to the contract.

Nevertheless, ESG reporting often avoids overt and objective factual statements to sustainability promises, aspirational goals or qualitative statements about corporate values. These representations have existed on a legally gray ground between statement of fact and opinion, making it hard to prove that they fall under the definition of actionable misrepresentations under classical contract doctrine unless it can be proven that the representor

[26] Jill E. Fisch, *The Trouble with ESG Investing*, 100 Tex. L. Rev. 1, 18–22 (2022).
[27] Umakanth Varottil, *Corporate Disclosure and Investor Protection in India*, 63 J. Indian L. Inst. 1, 25–28 (2021).

never intended to act on them when making the disclosure.[28]

Applicability to ESG-Based Investment Decisions.

The contractual framework also fails where it is used in the decisions made concerning ESG-based investments. Investors that are dependent on the ESG disclosures may have no direct contractual nexus with the issuing company, especially in the secondary-market deals.[29] In cases where privity can still be established e.g. in a private placement or a shareholder agreement, it is still factually difficult to prove that an ESG disclosure was a contractual inducement.

In addition, Indian contract law is transactional, and therefore focuses on bilateral exchanges rather than systemic informational asymmetries. In comparison to this, ESG disclosures are multi-stakeholder, public and standardized, which undermine their ability to fit into the inducement-based analysis.

Evidentiary Challenges

The burden of proving fraud under Section 17 of the Indian Contract Act is very high, which means that it has to demonstrate that the fraud was intentional (proving intentional deception is a high evidentiary burden).[30] This is particularly a problem in ESG-related cases, where misstatements are more commonly the result of selective disclosure, and methodological obscurity than blatant falsity. The lack of standardized ESG benchmarks only goes to make the judicial review more challenging and the courts are not well equipped to tell the difference between the good-faith sustainability and calculated greenwashing.

5.2 Fraud and Disclosure Violations under the Securities Law

SEBI Act and Securities Fraud

In conjunction with the SEBI (Prohibition of Fraudulent and Unfair Trade Practices); the Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2003 (PFUTP Regulations),

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[28] *Bisset v. Wilkinson*, [1927] A.C. 177 (P.C.);
Luca Enriques, *Disclosure and Corporate Accountability*, 44 Del. J. Corp. L. 1, 19–22 (2019).
[29] *Derry v. Peek*, (1889) 14 App. Cas. 337 (H.L.);
Jill E. Fisch, *The Trouble with ESG Investing*, 100 Tex. L. Rev. 1, 14–17 (2022).
[30] Indian Contract Act, 1872, § 17;
Ningawwa v. Byrappa, AIR 1968 SC 956.

these provisions declare the prohibition of deceptive practices in relation with securities transactions.[31] The interpretation of the various acts in conjunction with the SEBI(Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (PFUTP Regulations) proscribes deceptive practices in connection with securities

By theory, ESG misrepresentations can be covered under the category of securities fraud where it can have a significant effect on security prices or investor behavior. In reality however, there has been limited enforcement. Indian securities jurisprudence has been used to cast a narrow eye on financial mis-statements, insider trading, and market manipulation as opposed to non-financial disclosure including ESG performance.

Challenge in Determining the Will and The Cause.

Even though Indian courts recognize that fraudulent intent can be established through circumstantial evidence, still regulators have a huge burden proving that misleading ESG disclosures were undertaken with the objective of depriving investors. Corporations can conceivably blame changes in standards, third-party rating procedures, or misestimation.

Causation is another obstacle. As compared to the financial misstatements, the effects of the ESG claims on the share prices are usually indirect and diffused thereby making it hard to prove the causal relationship between misrepresentation and investor loss. This weaker enforcement as well as individual remedies of the securities law.

ESG Claims: Soft Information

ESG disclosures are often categorized as a soft information, i.e. the statements, where opinion, prediction or corporate philosophy are implied, but not verifiable as a fact.[32] As comparative jurisprudence shows, courts are not keen to find liability on such statements in the absence of any clear evidence of dishonesty, and so, this regulatory grey area has provided issuers with an opportunity to take advantage of it.

[31] Securities & Exch. Bd. of India Act, 1992, § 12A;
SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (India).
[32] *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1090–97 (1991);
Luca Enriques & Matteo Gatti, *The ESG Illusion*, 46 Bus. L. Rev. 1, 18–22 (2021).

5.3 ESG Advertising and Consumer Protection Act, 2019

False Advertisements and Unhealthy Competitions

At face value, this legal framework would be very efficient in regulating the presence of misleading advertisements and engaging in unfair trade practices, including false statements about the standard, quality, or benefits of goods and services. The recent regulatory trends such as those in the guidelines of the Central Consumer Protection Authority (CCPA) on misleading advertisements are an indication of increased scrutiny concerning environmental claims.[33] Nevertheless, its enforcement is still partial and mostly complaint-based, which makes the practice less effective in preventing ESG greenwashing.

ESG Claims as Consumer Representation

The representations of ESG are becoming more consumer oriented, influencing the purchasing choice not only by the utilitarian quality of the product, but also by the moral values. However, the conventional notion of consumer law understands harm based on the loss of money or a lack of product, in contrast to the misrepresentation of ethical or environmental anticipations. This mismatch of the doctrines creates confusion: when consumers are misled by inflated ESG claims, it may be hard to prove actual harm, despite the fact that the misleading act had an impact on an informed choice. Therefore, ESG greenwashing can not be effectively punished by the consumer protection law.

5.4 Why ESG Deception is not regulated by the Existing Laws

None of ESG-Specific Liability Standards

In contract, securities and consumer law, enforcement is frustrated by the lack of ESG-specific disclosure standards.[34] In the absence of definite statutory standards, adjudicators have to fall back on generalized notions of fraud that do not suit the technical and dynamic aspects of ESG measures.

High Burden of Proof

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[33] Central Consumer Protection Authority, *Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements* (2022).

[34] Luca Enriques & Matteo Gatti, *The ESG Illusion*, 46 Bus. L. Rev. 1, 18–22 (2021).

All the legal regimes demand a high standard of proof- intent in contract and securities law, or provable consumer harm in the CPA.[35] The thresholds are seldom met in the case of ESG deception which frequently functions via selective truth, omission and narrative framing even though it has real world consequences.

Lack of Stakeholder-Favored Remedies

Lastly, the current legislation gives more importance to the protection of investors or consumers in limited scopes without taking into consideration the larger interests of stakeholders, including environmental degradation, social effects or intergenerational justice. The main types of remedies are compensatory and punitive, which provide minimal room to remedial disclosure, sustainability performance, or systemic deterrence.

6 ENFORCEMENT AND INSTITUTIONAL PROBLEMS: LAW ON PAPER TO LAW IN ACTION

Although the recent regulatory efforts have aimed at improving the quality and consistency of the ESG disclosures in India, the most important weakness of the system is the enforcement. The success of any disclosure regime is not just based on the reality of legal norms, but on the institutional ability to oversee adherence, research breaches, and provide effective sanctions. The regulatory framework, market structure and procedures in the context of ESG construe enforcement mechanisms, resulting in a significant disjuncture between what is defined and what is implemented with respect to accountability.

6.1 Limitations on Enforcement of SEBI

Reactive and not proactive Oversight

SEBI is more of a disclosure based regulator who involves itself when violations have occurred and not in active, ongoing supervision.[36] This model of enforcement is especially unsatisfactory in the case of ESG disclosures, which are often narratives, long-term obligations, and

[35] Indian Contract Act, 1872, § 17;
Consumer Protection Act, 2019, § 2(28);
Ningawwa v. Byrappa, AIR 1968 SC 956.
[36] Securities & Exch. Bd. of India, *Business Responsibility and Sustainability Reporting Framework* ¶¶ 5–7 (2021);
Somasekhar Sundaresan, *Securities Regulation and Enforcement in India*, 54 J. Indian L. Inst. 233, 255–58 (2012).

complicated methodological suppositions. The application of Business Responsibility and Sustainability Reporting (BRSR) mandates imposed under the SEBI on listed companies is still mostly complaint-based or driven by market occurrences unlike financial reporting where red flags include accounting anomalies or price fixing attract regulatory attention. Consequently, the problem of fraudulent sustainability claims can exist over a long period of time and undermine investor confidence without causing prompt regulatory response. In addition, the enforcement structure of SEBI has traditionally given priority in market integrity and investor protection in the smaller financial context, but ESG disclosures involve other stakeholders interests and long-run systemic risks that are out of its traditional enforcement intuitions.

Lack of ESG-Specific Sanctions

Another weakness is the absence of ESG-related penalty clauses. Although SEBI have the broad authority to levy financial fines on misleading disclosure under SEBI Act as well as other corresponding regulations, they are not measured to the unique character of ESG wrongdoings.[37] Without varying penalties, deterrence is reduced especially when the reputational and financial price of excessively inflated ESG is higher than the threat of being punished. Also, enforcement measures under current securities law entail regulators have shown materiality, and investor effect, which is challenging to meet in ESG cases because of the indirect and long-term harm. Lack of clear enforcement procedures of ESG violations thereby undermines regulatory credibility and portrays laxity and not responsibility.

6.2 Corporate Self-Regulation and ESG Ratings

Conflict of Interest

ESG governance in India depends greatly on corporate self-regulation and third-party ESG rating agencies in the absence of a strong enforcement by the populace.[38] Ecosystems of companies frequently provide ESG information on a voluntary basis or reacting to soft regulatory pressures, and ratings agencies pool and derive sense of this data to the investors.

This model is susceptible to the issue of conflict of interest. ESG rating agencies often use data

[37] Securities & Exch. Bd. of India Act, 1992, §§ 11, 15HA;
Somasekhar Sundaresan, *Enforcement under Indian Securities Law*, 56 J. Indian L. Inst. 321, 335–38 (2014).
[38] Florian Berg, Julian F. Kölbel & Roberto Rigobon, *Aggregate Confusion: The Divergence of ESG Ratings*, 64 Rev. Fin. Stud. 1, 4–9 (2022).

provided by the same companies that they are assessing, and in certain instances, consultancy or advisory services are offered by the agency to the companies, which leads to the independence and credibility of ESG ratings being impaired to allow issuers to perform strategic disclosure or selective transparency.[39]

In India, the ESG raters do not have an extensive regulatory framework that covers the methodology, transparency, or accountability as compared to credit rating agencies. Such regulatory loophole allows uneven standards and black box scoring schemes to thrive.[40]

Weakness of ESG Rating Agencies Accountability

Lack of legal responsibility in ESG rating agencies also contributes to enforcement difficulties. Investors and other stakeholders who base their actions on the ESG scores do not have much to fall back on when it comes to cases of careless or deceptive rating. Indian law does not as yet hold fiduciary-type, disclosure, and liability status on ESG rating providers akin to those of the traditional financial intermediaries.[41]

This means that ESG ratings can be viewed as reputational indicators and not legally dependable indicators, which decreases their effectiveness as a tool of enforcement. This lack of responsibility undermines the market discipline and allows ESG fraudulent communication to spread with minimum fear of punishment.[42]

6.3 Courts and Quasi-Jurisdiction.

Limited ESG Litigation

ESG obligations in India are still at an infantile stage of judicial enforcement. Whereas Indian courts have shown activism in environmental protection and corporate responsibility in the contexts of the public law, greenwashing-specific litigation has been restricted, especially in the context of disclosure frauds.[43]

[39] Int'l Org. of Sec. Commissions (IOSCO), *Environmental, Social and Governance (ESG) Ratings and Data Products Providers* 10–14 (Nov. 2021).
[40] Anil K. Sharma, Regulating ESG Rating Agencies in India: The Missing Link in Sustainable Finance, 15 NUJS L. Rev. 211, 220–23 (2023).
[41] Sec. & Exch. Bd. of India, *Consultation Paper on ESG Rating Providers* (Jan. 24, 2023).
[42] OECD, *Policy Responses to Greenwashing* 27–30 (2023).
[43] *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India).

This lack documents the uncertainty in the doctrines, as well as an institutional reluctance. ESG cases tend to be technical in nature involving issues of sustainability indicators, climate change or social-impact measurement, where the court may lack specialised knowledge. This has made judges hesitant to apply the traditional fraud or misrepresentation doctrines to claims concerning ESG.[44]

The Hurdles in Procedural Collective Actions

There are also procedural limitations limiting judicial enforcement. Mechanisms of collective redress in India, where a company law class action or representative consumer complaint might be available, are not fully used, and face procedural challenges.

Also, solutions that could be found in judicial or quasi-judicial settings are usually retrospective and compensatory, with little ability to provide corrective disclosure or prospective compliance. This remedial framework, which is reactive is not appropriate to deal with the systemic and continuous nature of ESG misrepresentation.[45]

7. COMPARATIVE INSIGHTS: THE GLOBAL ESG ENFORCEMENT AS A LEARNING

A comparative analysis plays a fairly minor yet significant role in ESG scholarship: by showing that ESG deception is not a domestic regulatory problem, but a challenge of global governance, which led to a variety of enforcement reactions. A low-profile analogy with the European Union and the United States shows that they have two different regulatory philosophies; that is, one based on the ex-ante standardisation and verification and the other based on ex-post enforcement and lawsuits. The two solutions do provide educative teachings to India without necessarily requiring extensive transplantation of their legal framework.[46]

7.1 European Union

Anti-Greenwashing Regulations

European Union has embraced the most elaborate set of rules to deal with greenwashing and

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[44] Surya Deva, Corporate Human Rights Violations and Judicial Hesitation, 32 Indian J. Int'l L. 321, 330–33 (2020).
[45] Cary Coglianese, Regulatory Enforcement and the Sustainability State, 45 Regulation & Governance 1, 9–12 (2021).
[46] OECD, *ESG and Corporate Governance: Global Regulatory Trends* 12–15 (2022).

ESG falsehood. Enforcement of ESG in the EU has been integrated into a more comprehensive sustainability-governance framework, and not seen as a side-show of disclosure. The disclosure regulations of sustainable finance like the Sustainable Finance Disclosure Regulation (SFDR) and the Corporate Sustainability Reporting Directive (CSRD) provide companies with complex requirements to prove environmental and social assertions with standardised and verifiable data.[47]

More importantly, the EU regulators have specifically identified greenwashing as a market-integrity issue. A new Green Claims Directive proposed by the European Commission aims to ban baseless environmental claims and requires sustainability claims be backed by scientifically credible evidence. 2 This is a regulatory move toward allowing aspirational ESG rhetoric to exist to the enforced need to prove it.

Verification and Penalties that are mandatory.

One of the characteristics of the EU model is that sustainability disclosures are obliged to be verified by a third party. Under the CSRD, big firms must seek limited (and ultimately plausible) assurance of ESG disclosures, and puts sustainability data in the audit infrastructure.[48]

Non-compliance can be punished not only symbolically. Member States must also provide effective, proportionate and dissuasive sanctions, such as administrative fines and remedial disclosure orders. The EU action therefore considers ESG misrepresentation as a regulatory evil per se, as opposed to a by-product of securities or consumer law breaches.

7.2 United States

ESG-Securities Lawsuits.

Unlike the ex-ante regulatory design of the EU markets, the securities litigation and regulatory action have been the two leading methods in enforcing the implementation of ESG in the United States. Claims related to ESG are also becoming presented as material misstatements under the federal securities laws, especially when companies overstate their climate promises,

[47] Regulation (EU) 2019/2088, of the European Parliament and of the Council of 27 Nov. 2019 on sustainability-related disclosures in the financial services sector (SFDR)
[48] Directive (EU) 2022/2464, arts. 19a, 29a.

diversity programs or risk-management activities.

Although the U.S. courts have been firm on the impossibility to impose liability in the case of uncertain corporate optimism, they have indicated they are ready to examine ESG disclosure that is inconsistent with internal data or operational real-world conditions.[49]

SEC Enforcement Actions

The implementation of new regulations has aggravated under the U.S. Securities and Exchange Commission (SEC), which has created a special Climate and ESG Task Force to detect misconducts associated with sustainability reporting. SEC has initiated enforcement against issuers and asset managers regarding misleading ESG reporting practices, focusing on the precision of disclosures, but not moral or policy commitments.

It is worth mentioning that the strategy of the SEC does not involve demonstrating that the environment is harmed; the basis of liability lies in the misrepresentation of investors and informational asymmetry. This has been made possible through this framing that has resulted in enforcement even when the ESG claims are made through qualitative judgment, so long as they are framed as factual or verifiable assertions.

7.3 Lessons for India

Need for Enforceable ESG Standard

The comparative experience highlights one of the major lessons that India should learn: ESG regulation, but not follow-up, is going to become performative. Both the EU and the U.S. with their divergent regulatory philosophies are past voluntary disclosure models. ESG claims are becoming discussed as legal statements with legal consequences either by means of standardised reporting and verification (EU), or by means of credible enforcement threats (U.S.).[50]

In the case of India, it implies that there should be clear, enforceable ESG standards to eliminate interpretive ambiguity. In the absence of definition and verification procedures, ESG disclosures will remain subject to no serious examination by existing fraud and disclosure

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[49] Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 575 U.S. 175 (2015).
[50] OECD, *Policy Responses to Greenwashing* 27–30 (2023).

principles.

Change in Voluntary Compliance to Liability-Based Governance

The second lesson that we can derive as a result of our analysis is the shift between soft-law encouragement to a liability-based framework. The existence of comparative regulatory regimes has constantly shown that market discipline alone cannot effectively prevent ESG deception. The sanctions that stand a realistic chance regardless of whether they are administrative, civil, or reputational are what determines the credibility of a regulatory system. Although the Indian setting does not require wholesale imitation of the foreign models, the introduction of specific ESG-related liabilities, such as punitive measures against the unsubstantiated claims, obligatory reporting by the large issuers, or increased reporting requirements regarding the ESG-themed financial products would bring the domestic regulation to the global standards without being insensitive to the local institutional context.[51]

8. RECOMMENDATIONS ON BRIDGING THE DISCLOSURE ENFORCEMENT DIVIDE

The analysis above shows that the lack of disclosure norms is not the bane of ESG regulation in India but the lack of enforcement mechanisms that would then convert norms into a situation where they become legally consequential accountability. Closing this gap requires a multi-layered reform agenda rebalancing the substantive law, regulatory application, corporate governance and remedies to the stakeholders. The section gives progression to specific, institutionally realistic suggestions that would change the symbolic compliance to ESG disclosure to legal governance instrument.[52]

8.1 Legal Reforms

Greenwashing Statutory definition

One of their initial reforms should be the legalizing of greenwashing as a different category of fraudulent behavior. Indian law presently deals with misleading representations by broad principles of fraud and consumer protection, yet they do not reflect the distinctive form of ESG

[51] Umakanth Varottil & Pratik Datta, *Reimagining Corporate Regulation in India*, 64 J. Indian L. Inst. 1, 19–22 (2022).
[52] OECD, *Policy Responses to Greenwashing* 27–30 (2023).

deception, which is often a partial truth, select measure, and false statements that cannot be verified. The ambiguity of interpretation could be mitigated by introducing a statutory definition, either under the securities laws or consumer protection laws. A proper definition must include baseless environmental/social statements, deceptive sustainability stories, and material ESG risks omissions selectively.[53] Experience has confirmed that the clarity of definition is a condition to successful enforcement and not an obstacle to corporate innovation.

Specific Misrepresentation Offences ESG

In addition to definite reforms, the Indian law must be used to endorse ESG-related misrepresentation crimes that are measured by the intensity of sustainability reports. The current fraud laws put a very heavy burden of proof on intent and causation, which makes them inappropriate in the ESG context. An offence customized - based on material mis-statement or omission, but not the intent of a fraud - would be more consistent with the informational purpose of ESG disclosures in market decision-making. This is a reflection of the securities regulation wave in which liability is becoming dependent upon the quality of disclosure, and not upon the presence of subjective mens rea. Notably, these crimes are intended to be civil and regulatory, thus not overstepping criminal boundaries and also enhancing deterrence.[54]

8.2 Regulatory Measures

Mandatory Third party ESG Audits

Regulatory reform needs to cover structural constraints of self-reported ESG disclosures. The introduction of mandatory third party ESG audits of big listed companies would significantly increase credibility and comparability. The scope of assurance requirements should also be narrow in the initial years focusing on the most important metrics and methodologies and be expanded over time as the institutional capacity builds. The fact that the ESG assurance is embedded in the audit ecosystem minimizes the information asymmetry and limits the managerial discretion in the sustainability reporting. Comparison jurisdiction evidence suggests that obligation to verify has a significant effect in mitigating the risks of greenwashing without imposing disproportionate compliance costs.

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[53] European Comm'n, *Proposal for a Directive on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)*, COM (2023) 166 final.

[54] Luca Enriques & Matteo Gatti, *The Uneasy Case for ESG*, 38 Yale J. on Reg. 735, 748–52 (2021).

Improved SEBI Enforcement Authority.

Institutional empowerment is also required in enforcing it effectively. The Securities and Exchange Board of India must be endowed with direct authority on the enforcement of ESG as well as issues of corrective disclosure order, proportionate penalties as well as independent verification in the event to which misrepresentation is suspected. More importantly, guidelines regarding the enforcement of ESG disclosures would improve predictability in the regulation and reduce arbitrariness fears. Instead of spreading the punitive powers blindly, reform must promote procedural transparency, administrative skill and proportional sanctions as indicators of plausible regulation.[55]

Corporate Governance Reforms

8.3. ESG Accountability on the Board

Reform of corporate governance is a vital and under-used tool of ESG responsibility. It should be clearly placed on the boards of directors to manage ESG through a sustainability committee, or by broadening the scope of the current audit or risk committees. Making the board level responsibility formal determines the ESG governance in line with fiduciary oversight frameworks and indicates that sustainability is not just a reputational issue, but a strategic and legal one. The liability of the directors to the long-term corporate interests is already present in the Indian company law; the ESG accountability is a logical continuation but not a dogmatic breakthrough.[56]

Internal Environmental Social Responsibility Systems.

Additional to the board oversight, firms ought to be urged or mandated to institute internal ESG compliance models that mirror the financial compliance models. Such systems would have data validation standards, cross-functional reporting system, internal auditing of ESG claims prior to disclosure to the public. This internalized compliance makes the ESG governance a post-hoc justification to ex-ante risk management and this lowers regulatory exposure and reputational damage. Notably, internal compliance requirements are to be scaled according to

[55] Securities & Exch. Bd. of India, *Consultation Paper on ESG Rating Providers* (Jan. 24, 2023).
[56] Companies Act, 2013, § 166(2) (India).

companies size and industry risk instead of placing standard burdens.[57]

8.4 Stakeholder Remedies

Investor Class Actions

To overcome the disclosure-enforcement gap, stakeholder enforcement is mandatory. India is recommended to reinforce the collective measures against investor misrepresentation of the ESG, especially regarding cases involving misleading reports involving market valuation or investment decisions. Although such actions are provided in the company law under statutory provisions of class actions, their success has been curtailed by the complexity of the procedures and demonstration of the facts on the ground.[58] Simplifying the standing requirements and empowering the representatives to take actions to disclose-related injuries would help streamline the enforcement of the law privately without overloading the system with predatory lawsuits.

Consumer Compensation Systems

ESG representations are becoming more and more important determinants in the purchasing decision made by the consumers, but there is a lack of redress mechanism. Consumer forums must be enabled to deal with misleading advertisements based on the ESG even in cases where harm to the economy is diffuse or non-quantifiable. This might necessitate informational harm and ethical deceit of the doctrinal acknowledgment as cognizable harms. Enhancing consumer redress does not merely safeguard autonomy of individuals but also upholds the aspect of market discipline through punishing misleading sustainability marketing.[59]

CONCLUSION

The shift in India towards ESG oriented corporate governance is a substantive step in terms of regulation and normative transformation, to make the business practices more sustainable, stakeholder friendly, and value creation in the long term. The compulsory ESG disclosures in the BRSR and BRSR Core scheme of SEBI are a bold endeavor at integrating environmental

[57] Cary Coglianese, *Regulatory Enforcement and the Sustainability State*, 45 Regulation & Governance 1, 9–12 (2021).
[58] Companies Act, 2013, § 245 (India).
[59] Consumer Protection Act, 2019, §§ 2(47), 35–38 (India).

and social concerns into corporate decision-making. However, as has been observed in this paper, the current ESG regime is still disclosure-based and lacks adequate mechanisms through which meaningful corporate accountability can be achieved. The meteoric increase in the number of reporting requirements has not been matched by the corresponding number of tools to enforce them, which has left open spaces to greenwash and false-sounding sustainability reports.

The examination shows that there is an ongoing gap in the legal system of India, prevailing as a fraudulent misrepresentation, where misleading ESG disclosure is not well investigated by the current corporate and securities law and consumer protection law. Conventional fraud, misrepresentation, and fiduciary duties doctrines are inappropriate to deal with the qualitative, futuristic, and technical character of ESG claims, permitting companies to present deceptive sustainability claims as a non-binding puffery, rather than a legally significant statement. This loophole does not only vitiate investor confidence and market integrity, but undermines the value of ESG as a tool of governance.

Experiences of the European Union and the United States show that the enhancement of ESG accountability may be achieved through shifting towards the realm of not a symbolic compliance with legal requirements but legal obligations. In the case of India, this will require a rebalancing of the national ESG system by legalizing greenwash, mandating third-party verification of ESG reporting and an increase in the fiduciary obligations of directors, and effective stakeholder remedies, including class-action mechanisms. The integration of ESG reporting and binding liability is necessary in getting India to transition to sustainability based on the verifiable corporate behaviour but not entirely on the reputational marketing. Such substantive legal responsibility is the only way of ESG to realise its potential as a tool of responsible, transparent, and resilient corporate governance.