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ESG Investing in India: Greenwashing Risks and Legal Accountability under SEBI Regulations

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ABSTRACT

The practice of deceiving stakeholders by falsely portraying an organization's operations, products, or policies as environmentally or socially responsible termed "greenwashing" in the field of Environment, Social, and Governance. Concerns regarding greenwashing had grown as the ESG factors had become more crucial for uplifting Corporate Governance and for influencing investor's decisions. This paper examines the relationship of greenwashing and insufficient ESG legal framework, examine how governance, regulatory monitoring, and investor due diligence allow for false sustainable claims. Through empirical analysis and case studies, this study emphasizes how the mechanism must be put forward to ensure the pace in world run thus, guaranteeing true sustainability rather than being used as a cover for corporate deception.

***Keywords**: ESG, investments, greenwashing, regulation, reporting, SEBI, transparency, sustainability, investors, corporate governance.*

I. INTRODUCTION

ESG investing is the new era that blends societal advantages with economic success. That is the new non-tangible entity, unlike stocks or assets, which can be purchased or sold. Rather, this serves as a strategic lens that analyses all possible investments. ESG is broken down into three parts: environmental, social, and governance. Collectively, this offers the strongest framework that assesses a company's dedication or commitment concerning sustainable and ethical business operations.

- The environmental pillar[3] therefore examines the company's environmental impact and emphasizes on the discussion of resources, control of Pollution, mitigation of climate change
- The social pillar focuses on emphasizing the interaction between the company and its

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[3] https://treelife.in/wp-content/uploads/2024/12/ESG-in-India-Handbook-by-Treelife.pdf

stakeholders through parameters like employers' well-being, community participation, accountability for supply chain responsibility

- The governance pillar focuses on transparency, ethical leadership, and accountability, and includes parameters like board composition and compensation, risk management and responsible investment, business ethics and anti-corruption practices.

The rapid growth of ESG investing rapidly grew mainly cause of Indian's ambitious environmental goals. Strong ESG practices have become a key indicator of good business sense with investors prioritizing sustainability and ethical practices alongside financial performance for more stable, long-term growth. This is mainly driven by India's ambitious goal[4] to reduce carbon emissions by 45% by 2030, which has sparked investments in renewable energy and sustainable infrastructure. Investors are increasingly moving towards value-driven investments that offer both financial returns and positive social and environmental impacts. Companies with strong ESG commitments tend to outperform their peers in the long run[5] because they are better at taking risks related to social unrest, climate change, and governance issues.

Greenwashing is a key issue in ESG investment which is the way of using market tools to create an inaccurate, misleading and deceptive portrayal of a fund or a company being environmentally friendly, through their products or services, thus, trying to exaggerate how eco-friendly they truly are. IMCA and CCPA has defined and issued guidelines respectively on greenwashing, is a step forward to address this issue in ESG investments.

(A) Literature Review

- A recent research[6] found that greenwashing done through vague claims, irrelevant assertions and selective disclosures is one of the most significant obstacles to ESG reporting and corporate sustainability along with the absence of a strict regulatory framework and lack of third-party verification in India.
- Another recent study[7] provides a solution stating that to ensure authenticity and accurate data in ESG investing, a shared intellectual framework needs to be established about how financial firms will measure the extent to which the companies are actually doing

[4] https://www.downtoearth.org.in/energy/the-500-gw-switch-over
[5] https://www.forbes.com/councils/forbesbusinessdevelopmentcouncil/2024/07/31/view-from-the-top-and-the-trenches-the-current-esg-landscape/
[6] Hassan, S. (2024). Greenwashing in ESG: Identifying and Addressing False Claims of Sustainability. Journal of Business and Strategic Management, 9(8), 90–105. https://doi.org/10.47941/jbsm.2390
[7] The Problem Of Greenwashing In ESG Investments In Finance by Susan Thomas: https://pure.jgu.edu.in/id/eprint/5586/1/bqprime.com-The%20Problem%20Of%20Greenwashing%20In%20ESG%20Investments%20In%20Finance.pdf

financial inclusion.

- A post pandemic research[8] points out that people across the globe have viewed COVID-19 as the century's first sustainability crisis and have as a result of it have started to take on specific data relating to ESG for evaluating the external material risk that an organization is exposed to.
- The International Organization of Securities Commissions in July 2021[9] found little alignment, clarity, or transparency in methodologies for rating of ESG funds. They also noted potential conflict of interest where consulting companies provided ESG services to companies but also produced ratings or data products incorporating the same companies.
- The demand for ESG investment has been increasing in India. Environmental awareness, all the social parameters are favourable for ESG investments and the governance issue, although is an internal matter of every corporation, still overall good governance has been observed across most of the corporations in India.[10]

II. ESG INVESTING IN INDIA

Environmental, Social, and Governance (ESG) is a company's framework that enables companies to operate responsibly, tackle global sustainability challenges, and align their approach to achieving objectives. The investors, stakeholders, and customers extend to the firm by interpreting the ESG reports, which enables firms to embed these principles into their business strategy. This paves the way for sustainable financial benefits to return, gradually adding awareness in investors' direction for sustainable investment.

ESG was in a dormant state until COVID-19 in 2020[11], which almost took the world. This terror served as the catalyst that revived ESG to the global spotlight. More than one hundred nations signed platforms such as the 2015 Paris Agreement and the UN Sustainable Goals (SDG) 2030[12]. In India, the history of ESG principles started with the benevolent efforts of major industrial conglomerates like the Mahindra Group and the TATA. Over the years, India's increased its efforts towards preserving and uplifting sustainable development, which helped in

[8] ESG Board's Responsibility – India and Globally by CS Rajiv Jha, FCS, https://www.icsi.edu/media/webmodules/CSJ/October/17.pdf
[9] International Organisation of Securities Commissions (IOSCO). 2021. "Environmental, Social and Governance (ESG) Ratings and Data Products Providers. Consultation Report." July 2021 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD681.pdf
[10] https://www.caluniv.ac.in/dj/BS-Journal/V-43-I&II/BP.pdf
[11] https://www.edhec.edu/en/research-and-faculty/edhec-vox/were-esg-firms-really-more-resilient-during-covid-19-crisis
[12] https://www.sei.org/publications/connections-between-the-paris-agreement-and-the-2030-agenda/).

paving out the way for corporate transparency and growth by establishing its international commitments. Therefore, ESG principles are more of a core significance for publicly listed companies for the country's regulatory legal framework.

The legal framework for ESG organizations acts as a powerful tool for the companies to turn their sustainability into actionable strategies. Global reports have justified that companies integrating ESG practices into resourcefulness operations tend to beat their competition. The various paybacks[13]of ESG:

- Protection of ESG: guides companies to shift towards renewable energy source, reduce carbon footprints, and implement ethical practices like waste management, etc.
- Stakeholders' trust and Clarity: organizations that follow international reporting and disclosure supply foster more simplicity, steadily attracting investors for investment purposes.
- Transparency Attraction and Capital Possibility Management: Investors are searching for businesses with the most effective ESG policies that are robust and more demanding for safer money placement. Therefore, a durable ESG-disciplined company attracts strong stakeholders to gain benefits.
- Risk Management- active management of threats and therefore eradicating long-term risks.
- Employee Retention Satisfaction: a contribution towards generally increasing employee satisfaction and therefore enabling a positive environment for investors.
- Reduction of Corporate Scams: reputational damage for false ESG reporting as seen in the Volkswagen 2015 scandal[14], governs the corporate accountability are more guaranteed at present time.
- Issues arising out of Data verification: challenges arising out of third-party verification or data monitoring that gets critical for capturing ESG compliance and impacts investors.
- Balance between Sustainable and Profitable investing: Investors and companies frequently struggle at prioritizing sustainability over profits.

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[13] https://www.forbes.com/sites/lbsbusinessstrategyreview/2025/03/25/what-the-esg-backlash-reveals-and-what-comes-next/)

[14] https://www.bbc.com/news/business-34324772

By 2025, the Global ESG investing markets aim to reach ISD 53 trillion[15], or slightly more. As of September 2034, in India ESG-themed mutual funds must reach an AUM of INR 9,986 crores. The compound annual growth is expected to be 30% for the Indian ESG market, i.e., to reach 50,000 crores[16] by the year 2030. The challenges to overcome the targets:

- Reach zero emissions by 2070
- Non-fossil energy capacity to double to 500 GW by 2030
- 50% of the country's energy needs to come from clean sources by 2030

ESG is crucial for sustainable growth and corporate governance; they are no longer optional. Despite problems like greenwashing and regulatory gaps, global and Indian trends indicate that ESG significance is gaining more attention. Companies adopting ESG principles gain competitive advantages and attract investors, further gaining sustainable financial success by significant contribution to a sustainable future world.

III. Greenwashing

Greenwashing is the way of using market tools to create an inaccurate, misleading and deceptive portrayal of a fund or a company being environmentally friendly or ethical, through their products or services, thus, trying to appear eco-friendlier than they truly are.

A concentrated definition such as the one given by ICMA[17] for financial regulatory purposes, could serve the purpose of identifying, quantifying, and regulating greenwashing. It is defined as a misrepresentation of the sustainability features of a financial product and/or of the sustainable commitments and/or achievements of an issuer that is either intentional or due to gross negligence. (section)

The Central Consumer Protection Authority[18] has also issued guidelines for the Prevention and Regulation of Greenwashing. It defined greenwashing under section 2(e) as any deceptive or misleading practice, which includes concealing, omitting, or hiding pertinent information, by amplifying, making vague, false, or uncorroborated environmental claims. It includes the use of misleading words, symbols, or imagery, placing emphasis on positive environmental aspects while downplaying or concealing harmful attributes, and excludes the use of obvious

[15] https://www.bloomberg.com/professional/insights/trading/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/

[16] https://esgrisk.ai/

[17] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://imcaweb.blob.core.windows.net/wp-uploads/2021/03/Final-Version-of-ES-Code-of-Practice-002.pdf

[18] https://legal.economictimes.indiatimes.com/news/law-policy/ccpa-unveils-guidelines-to-prevent-greenwashing-experts-call-it-a-step-toward-consumer-protection/114337718

hyperboles, puffery, or use of generic color schemes or pictures; either not amounting to any deceptive or misleading practice.

(A) Greenwashing in ESG Investing Effecting The Market

1. **Quality of returns:** though greenwashing may still lead investors towards short term gains, but ultimately the long-term returns go down as investors gradually uncover the reality of such company's sustainable goals and diminishes their willing to invest in it any further.
2. **Erosion of trust:** greenwashing ends up eroding the trust that the public and investors had on the supposedly genuine sustainability efforts, thereby leading to a further decline in confidence in ESG investments.
3. **Reputational risks:** when the companies and funds engaging in such greenwashing practices comes to light, they face a lot of backlash, loss of potential and existing investors, and legal actions. This sabotages their brand image and reputation.
4. **Impact on purchase intentions:** investors go ahead with ESG investments with the intent to contribute to something meaningful, either the environment, social or better governance. But greenwashing negatively impacts such decisions of the investors, thereby leading to a decline in investor's intention to invest in ESG.
5. **Investment diversions[19]:** investors end up unknowingly supporting companies that upholds marketing over sustainable decisions and actions, thereby leading to misallocation of capital. Greenwashing not only misleads by falsely portraying true intentions of the fund or the company, but also uses greenwashing to collect such funds and diverts them to be used in harmful industries.
6. **Increased scrutiny[20]:** the low-quality data and consistency in ESG reporting, is an eye opener as some companies reporting high end numbers, are later found to be inconsistent. Thus, investors, customers, and regulators[21] are demanding better transparency and accountability, thereby creating an environment where companies are being pushed to be more genuine in making such commitments.

(B) Greenwashing Cases Observed in India

[19] https://www.researchgate.net/publication/376447965

[20] https://pure.jgu.edu.in/id/eprint/5586/1/bqprime.com-The%20Problem%20Of%20Greenwashing%20In%20ESG%20Investments%20In%20Finance.pdf

[21] https://pure.jgu.edu.in/id/eprint/5586/1/bqprime.com-The%20Problem%20Of%20Greenwashing%20In%20ESG%20Investments%20In%20Finance.pdf

1. **Vedanta Resources,** a global mining company having its operations in India, has been marketing itself as a responsible corporate entity focused on sustainable development[22], but has been found to be responsible for it negative environmental and social impacts like deforestation and pollution in its mining operations in Tamil Nadu and Odisha, and at times has led to its conflict with local and indigenous communities and has been criticized for the same. This has over the time undermined its ESG claims. It has been argued that Vedanta's promotion of various environmental initiatives and its sustainability reports are inadequate and majorly serves as a marketing tool to enhance company's image instead of a real commitment towards environmental protection.
2. **Bharti Airtel,** one of the largest telecom companies in India, has with regard to its energy consumption and carbon neutrality goals been accused of greenwashing in its sustainability claims.[23] It has been accused of over emphasizing its achievements on increased renewable energy usage and reduced carbon footprint, without a explicit reporting framework. Although it promotes its initiative to adopt to clean energy, yet it continues to operate a substantial portion of its infrastructure using diesel generator, known for their high emission. The company has invested in CSR initiatives and marketed its sustainable environmental goals but has been subjected to inspection as to whether their investments are substantial enough to match the claims made in its ESG reports.
3. **Reliance Industries,** being one of the largest conglomerates in India has, over the years introduced several initiatives to reduce its carbon footprint and has made significant investments in clean energy. But, it has been argued that its main businesses like refining and petrochemicals sabotages, its sustainability claims. Although, reliance has positioned itself as a leader in clean energy through investments in solar and green hydrogen, yet it still earns a significant portion of its revenue from fossil fuel-based industries, which according to critics lowers its eco-friendly image. And this deep tie of it to the fossil fuels have raised doubts about the credibility of its ESG goals in the long run. ERP guidelines compel companies to manage plastic waste, which may result in claims of compliance without any substantial action.

IV. LEGAL FRAMEWORK

To promote corporate accountability and regulate Environmental, Social and Governance

[22] AABFJ Volume 16 Issue 5 2022. Sensharma, Sinha & Sharma: Do Indian Firms Engage in Greenwashing?
[23] https://www.downtoearth.org.in/climate-change/investors-accuse-22-indian-firms-for-hiding-environmental-impact-65180

(ESG) investments, Securities and Exchange Board of India (SEBI) had placed a regulatory framework:

1. **SEBI –** To incorporate ESG factors into the Indian Finance sector, certain measures are being taken:

    - Report on Business Responsibility and Sustainability (BRSR)[24] - to promote transparency and align with international sustainability standards. BRSR, as introduced in May 2021, induced top market capitalized 1000 listed firms to introduce ESG initiatives in their regulation.

    - ESG-Mutual Funds – ESG-focused Mutual Funds must deploy at least 80% of their assets in those securities that align with ESG strategies[25]. Furthermore, to guarantee the investments accurately, the ESG ranking must be submitted by the asset managers.

2. **SEBI's Business Responsibility and Sustainability Reporting (BRSR) Disclosure Guideline-** The nine principles of BRSR[26] address issues like equitable growth, environmental preservation along with ethical governance (for top 1000 companies):

    - Principle of transparency and accountability - mandatary disclosures about social and environmental aspects, such as energy use, water exploitation, waste, and employee wellbeing.

    - Principle of accuracy – reports must be fact based, that are backed by verifiable data rather than mere claims for marketing.

    - Principle of stakeholder protection – A grievance redressal mechanism must be established by each company for reporting misleading ESG claims. SEBI has the right to act against greenwashing firms, thus protecting investors and consumers.

    - Principle of Regulatory Compliance – Firms must ensure that their sustainability disclosures are meeting the international global regulatory compliance standards.

    - Principle of Independent Verification – BRSR prevents greenwashing by

[24] https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html

[25] https://www.crisil.com/content/dam/crisil/our-analysis/esg-research/esg-readings/how-indias-nine-esg-mutual-funds-stack-up.pdf

[26] https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html

encouraging third-party audits and external validation of ESG claims.

- Principle of Alignment with Global ESG Standards[27] – BRSR must comply with GRI (Global Reporting Initiative) and TFD (Task Force on Climate-related Financial Disclosures).
- Principle of Materiality – Firms cannot divert attention from material and relevant company core operations by promoting minor sustainability initiatives by engaging in harmful environmental practices.

Ministry of Corporate Affairs (MCA) has been pushing boards for better Corporate Governance[28] and transparency disclosures by improving transparency, preventing greenwashing, and holding businesses legally liable for their sustainability claims, SEBI's regulatory framework for ESG investments seeks to promote more ethical and sustainable business practices in India. Companies found guilty of greenwashing or noncompliance with BRSR may suffer huge fines, harm to their reputation, and additional regulatory scrutiny.

V. Lacunas in the existing laws

1. **Lack of good reporting framework:** As the current reporting framework covers only the data specific to the company and not those specific to the factory, which gives opportunity to companies which operate in a various sector to greenwash their ESG investments by concealing their polluting activities through their non-polluting activities undertaken in their other sectors. A very segment view has been observed in ESG reporting, rating, and regulations across the globe, which shows the lack of fluidity or flexibility across nations with regard to their ESG related matters according to the specific needs to be addressed in their respective nations. Moreover, in India there is no specific reporting framework with regard to the issue of green washing in ESG investments[29]. Moreover, Principle 7 of BRSR[30], asks businesses to be more transparent that would indulge responsibility on them, and that the core value of honesty and openness outcast false data. On investigation, companies are found publicly claiming to support sustainability only on selective transparency and there can be seen no real changes drive at policy regulations for impacting sustainability claim reports.

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[27] https://www.globalreporting.org/media/ioqnxtmx/sebi_brsb_gri_linkage_doc.pdf
[28] Corporate Governance laws and Regulation in India 2024-2025, Cyrin Shroff, Anchal Dhir, et.al., 10.07.24, https://iclg.com/practice-areas/corporate-governance-laws-and-regulations/india
[29] https://www.icsi.edu/media/webmodules/CSJ/October/13.pdf
[30] Principle 7, BRSR, https://www.dqsglobal.com/en-in/certify/business-responsibility-sustainability-reporting-brsr#:~:text=BRSR%20Principle%207%3A%20Businesses%2C%20when,inclusive%20growth%20and%20equitable%20development.

2. **Lack of awareness:** There has been a clear observation of the lack of awareness on both the investor's side and the company's side. Investor willingly invest in ESG investments without knowing the backdrops that come along with it, like greenwashing and how to not fall into such greenwashing tactics in ESG investing. And as ESG frameworks and reporting are complex in nature, results in many companies being unaware of it and also unaware of the regulatory compliance under other environmental legislations that they have to adhere to.

3. **Lack of assurance and verification:** The BRSR framework under SEBI does not specific anything about third party verification of ESG disclosure, rather provides for a voluntary disclosure approach under Principle 1[31] which has created a gap for fabrication of ethics as what is accountable to own perspective of the companies might not be same to the global order. This has further lead to incompleteness in reporting and lowered credibility of companies environmental claims.[32]

4. **Data quality and availability:** Data validity and reliability at the time of Monitoring, collecting, implementing, and enforcement as ESG data in reporting is done voluntarily by companies and, there is an evident lack of standardization reporting format in the ESG data in India. Moreover, there is inadequacy of human resources in terms of ESG-relevant skills and knowledge to ensure accurate data in appropriate reporting format is put out as disclosures. There have also been many instances where the data collected conceal the real status of company's environmental claims, as papers show different data which cannot be substantiated with actions of the company in reality.

5. **Resource constraints:** companies which operate with limited financial and human resources, allocates its resources in the most critical of functions and thereby the implementation of a good ESG compliance is beyond the scope of some companies. Moreover, the vast data and veracity of such data collected in the ESG investment space, technology, and methodology quickly become integral to stabilize and comprehend the data insights collected, thereby makes it difficult for such companies to effectively monitor their ESG compliance. Many Organizations in India know nothing about ESG data and might not have sufficient frameworks and cycles set up to gather and report

[31] Principle 1, BRSR, https://www.dqsglobal.com/en-in/certify/business-responsibility-sustainability-reporting-brsr#:~:text=BRSR%20Principle%207%3A%20Businesses%2C%20when,inclusive%20growth%20and%20equitable%20development.

[32] Id. (noting that the 'BRSR framework does not mandate external assurance and independent audit of the disclosures'). See also, IndusLaw, ESG Reporting and its Framework in India, THE LEGAL 500 (Feb. 2, 2022), https://www.legal500.com/developments/thought-leadership/esg-reporting-and-its-framework-in-india/.

ESG information. A few organizations, particularly more modest ones, miss the mark on assets and mastery to carry out ESG rehearses.

6. **Lack of a standardized ESG reporting framework:** The GRI framework had to some extent inspired the BRSR framework[33], and yet there is no clarity on whether GRI is being conformed to by the Indian companies on a constant basis without much deviation.

When compared to international standards, BRSR is still lacking across-the-board features, instead, the disclosure requirements are minimal, broad, and inappropriately built framework compared to the international frameworks such as that of the EU or TCFD.[34] Most importantly it is silent on explicit sectoral requirements, which is a crucial consideration as different industries are affected on different lines on ESG investment matters (sol). There is obscurity regarding the target audience that the BRSR is premeditated to serve. the details of the reporting requirements, like materiality assessment of ESG risks points towards a diverse range of other stakeholders as well, including employees, environment, consumers and the community. This in turn bears the risk that non-shareholders may rely upon what is directed principally at investors. The non-transparency in the area of ESG ratings combined with potential conflicts[35] of interest related to ERPs often leads to greenwashing investors.

VI. Policy recommendations

1. **Establishment of Regulatory Body for ESG Oversight:**

    - The deficiency of any established contract unit for measurement and a specialized reporting agency makes it difficult to evaluate the data when it comes to combating ESG greenwashing. Unlike the European Union (EU), having the Corporate Sustainability reporting Directive (CSRD)[36] having comprehensive ESG disclosures. Certainly, to solve this issue, India must adopt a National ESG measuring unit along with a centralized ESG reporting framework in order to eradicate greenwashing. India ought to set up a national ESG data repository where businesses may submit verified and standardized ESG measures unit. SEBI must establish a Sustainability Reporting Board, which will serve as an independent regulatory entity to enforce compliance and verify claims, as the

[33] Sudipto Dey, Sustainability in the Spotlight: Decoding India's ESG Regulatory Landscape, THE ECONOMIC TIMES (May 26, 2022), https://economictimes.indiatimes.com/prime/corporategovernance/sustainability-in-the-spotlight-decoding-indias-esg-regulatorylandscape/primearticleshow/91796559.cms.
[34] Goswami, Das & Jain, supra note 76.)
[35] https://indiacorplaw.in/2022/03/esg-rating-providers-analyzing-indias-proposed-regulatory-framework.html
[36] https://plana.earth/policy/corporate-sustainability-reporting-directive-csrd

European Union does.

- This Reporting Body must contain the specialized ESG Regulatory Authority (ESGRA), which will monitor, verify, and enforce every claim. To improve the quality and availability of ESG Data, the government can set up a database portal where companies must submit standardized and verified data from ESGRA. This will further increase transparency and will improve the scope for technologically driven ESG monitoring. On the basis of the reports from ESGRA on the portal, the use of resources and experts can suggest the firms which various strategies and implementation approvals for posting at the portal. Companies should update the reports on the portal annually or biannually, verifying the information with ESGRA to prevent outdated or misleading information.

2. **Need of an effective reporting framework:**

- Although there are regulations that sets a bar for corporate responsibility on environmental issues but there's no specific law addressing the greenwashing issue.
- The regulatory body should extend the requirement for ESG reporting beyond the top 1,000 listed companies[37] to cover all publicly traded companies. Thus, resulting in enhanced transparency and comparability of companies within the entire market and encourage smaller companies to begin their own ESG investment practices.
- ESG considerations are not merely optional for directors to consider on a voluntary basis, but they carry more onerous legal obligations: The Supreme Court, in the case of M.K. Ranjitsinh v. Union of India[38] stated that it is the specific duty of the directors to take into consideration the protection of the environment and dealt with it to be equivalent to the duties towards other stakeholders, including shareholders. The Court imported the meaning under section 2(a) of the Environment (Protection) Act 1986[39] as the expression 'environment' is not defined in the Companies Act, and held that the scope of this definition is satisfactorily capable of accommodating numerous ESG risks. Legal counsel in India are also of the opinion that any decision taken seemingly

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[37] https://sphera.com/resources/blog/esg-reporting-is-required-for-indias-top-listed-companies/
[38] 2021 SCC OnLine SC 326
[39] Section 2(a), https://www.indiacode.nic.in/bitstream/123456789/6196/1/the_environment_protection_act%2C1986.pdf

in the financial interest of the company and its shareholders, but which is found to be injurious to the environment, can transgress section 166.[40]

- Disclosures and reporting standard should be raised. Unless company managements are compelled to put out the impact of ESG risks, the specific consequences on various stakeholders and the company's strategy for addressing them, such reporting carries the risk of primarily signifying rhetoric and magnify the possibilities for green washing.
- Third party verification solution would ensure that the government's and regulator's role of enforcing the ESG disclosure obligations is accompanied by verification of ESG obligations on ESG disclosures discharged by auditors or independent verifiers, especially of the environmental category. Independent audits of ESG reports if introduced will ensure data accuracy and reliability. Companies found to be providing inaccurate or misleading ESG information should face penalties according to the veracity of misleading data. And implementing this would address the loophole in self governance of companies under principle 1 of BRSR[41]. Thus, third party verification should be conducted under ESG Regulatory Authority (ESGRA).
- As we have already observed instances of greenwashing through cases of companies like Vedanta, Bharti Airtel, Reliance Industries and so on, there is a need for more stringent regulation on transparency of data being reported. This is because principle 7[42] is not adequate to prevent so, through the core value of honesty and openness outcast false data, companies publicly claiming to support sustainability only on selective transparency. There is a need for real changes in policy regulations for ensuring transparency and full disclosure in sustainability claim reporting.

3. Need to keep up with international standards:

- In recent years, the COP 28 had addressed the issue of greenwashing,

[40] SHYAM DIVAN, SUGANDHA YADAV & RIA SINGH SAWHNEY, LEGAL OPINION: DIRECTORS' OBLIGATIONS TO CONSIDER CLIMATE CHANGE-RELATED RISK IN INDIA 13 (Sept. 7, 2021), https://ccli.ubc.ca/wp-content/uploads/2021/09/CCLI_Legal_Opinion_India_Directors_Duties.pdf.
[41] Principle 1, BRSR, https://www.dqsglobal.com/en-in/certify/business-responsibility-sustainability-reporting-brsr#:~:text=BRSR%20Principle%201%3A%20Businesses%20should,that%20is%20sustainable%20and%20safe.
[42] Principle 7, BRSR, https://www.dqsglobal.com/en-in/certify/business-responsibility-sustainability-reporting-brsr#:~:text=BRSR%20Principle%201%3A%20Businesses%20should,that%20is%20sustainable%20and%20safe.

recognizing the need for greater transparency and accountability in corporate climate pledges and its goal was to establish clear guidelines on what shall qualify as genuine climate action, precluding corporations from overstating their environmental claims. COP28[43], provided a platform for country-level regulators to share best practices and explore legally binding rules on corporate climate claims. This highlights significant regulatory focus on ensuring that companies align their climate commitments with real, measurable actions rather than deceptive marketing. India being a part of COP28, should inculcate these best practices and regulatory actions discussed, because as per Article 253[44] and 51(c)[45]. India has the power to give effect to international agreements which India has signed and ratified and shall also endeavor to foster respect for international treaty and law obligation.

- Although the BRSR framework draws some inspiration from the GRI framework at the global level, there is no clarity that Indian companies are complying with GRI on a uniform[46] basis. Many companies across the globe have voluntarily adopted the TCFD recommendations[47], and many jurisdictions around the world is considering requiring companies to do the same. Conversely, the BRSR efforts do not benchmark against the TCFD framework on the ever- augmenting disclosure requirements relating to environmental risk. With the increasing awareness and cases of greenwashing in India, India should increase its pace and adopt to be at par with global standards of reporting and regulation.
- Although the broad idea of section 166(2)[48] may on the face of it appear to be similar to section 172 of the UK Companies Act 2006[49], yet there are fundamental distinctions between them. The Indian statute follows the pluralist approach which necessitates directors to treat the interests of various specified stakeholders on an equal footing without any specified hierarchy of

43 Global Initiatives, https://www.climate-change.in/media/greenwashing-and-esg-separating-facts-from-fiction#:~:text=Conference%20of%20the%20Parties%20(COP%2028)&text=However%2C%20concerns%20over%20greenwashing%2C%20youth,actions%20rather%20than%20deceptive%20marketing.
44 https://www.constitutionofindia.net/articles/article-253-legislation-for-giving-effect-to-international-agreements/
45 https://blog.ipleaders.in/article-51-of-the-indian-constitution/
46 https://www.globalreporting.org/news/news-center/mainstreaming-sustainability-by-indian-companies/
47 https://www.fsb-tcfd.org/
48 https://indiankanoon.org/doc/111678554/
49 https://www.legislation.gov.uk/ukpga/2006/46/section/172

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importance.[50] On the contrary section 172 of the UK legislation[51] presents an enlightened shareholder-value model, under which the protection of the interests of various stakeholders doubles up as the optimal means to generate enhanced shareholder value.[52] in order to reduce greenwashing incidents, India should also adopt such an enlightened shareholder-value model.

4. Encourage SMEs for ESG compliance:

- With the increasing pace of the world towards conversation and natural resources and promoting sustainable development, customers are now becoming more ESG-conscious. They prefer only products and services from businesses following sustainable practices. If SME's start following ESG, they will benefit by reducing waste, enhancing resources, etc. Therefore, SEBI's BRSR shall be amended to be mandatory to not only top 1000 listed companies but also SMEs as their supply change gradually falls for the addition at those top companies.
- The SMEs are weak in terms of monetary power, and hence, it is difficult for them to encourage compliance as the resources are not available to them. Governments must help them by providing training and letting them enhance their learning benefits. Subsidiaries must be given to them for this linkup and tools for use. Banks and NBFCs can also offer low-interest loans for SMEs to adopt instruments for ESG compliance.

5. Enhance awareness regarding ESG and Greenwashing:

- The effective increase of public awareness about ESG and Greenwashing in India is crucial at this point where light needs to be focused. A structured approach towards identifying and adding the targeted audience – investors, corporates, consumers.
- The implementation stage must involve workshops and webinars that would amplify organizing sessions in partnership with SEBI, RBI, Industries, etc. Generally, discussing the need of the point towards a safer investment not only

[50] Amir N. Licht, Stakeholder Impartiality: A New Classic Approach for the Objectives of the Corporation 13 (European Corp. Governance Inst., Law Working Paper No. 476/2019 13), https://ssrn.com/abstract=3459450 (observing that 'India's Companies Act, 2013 presents the most dedicated attempt to date to implement a formal pluralistic, stakeholder-oriented duty', which is to 'put the interests of all stakeholder constituencies on the same level as constitutive elements of the interest of the company'

[51] https://www.legislation.gov.uk/ukpga/2006/46/section/172

[52] Virginia Harper Ho, "Enlightened Shareholder Value": Corporate Governance Beyond the ShareholderStakeholder Divide, 36 J. CORP. L. 59 (2010).

money but environment too. Various certification programs could also be arranged for the youth regarding the same that would encourage the new generation to understand the significance of sustainability and ESG importance for corporate growth. Detailed public disclosure at the governmental portal, as suggested earlier, is the best practice for the same. At the same time, a label can be introduced at the portal that would promote the “Verified ESG companies”. Such a portal would be easily accessible to retail investors and the public, too, hence helping the investors with genuine information that would save them from any cheating of fabricated information.

VII. Conclusion

With the rise in global awareness about climate change, there has been a growing demand for responsible business practices. ESG investments aim to promote ethical and sustainable business and cater towards a better environment wherein, socially conscious investors want to invest. But, as the use of deceptive practices like greenwashing is being used by Indian companies to mislead its investors and regulator, the aim towards a better environmental health gets scrapped along with violating investors right to transparency in such claims, thereby misallocating the fund so collected to gain more profit than doing any substantial environment protection action.

Despite the presence of ESG regulation, such misleading actions from the company’s end undermines the social corporate responsibility that it has towards the society where it operates and also sinks the trust of foreign investors. Further, this results in showing exaggerated economic and environmental growth of Indian capital market, and distorts market perception of the investors.

Although, BRSR was adopted from GIR, yet it has not inculcated in it the level of transparency in disclosures and better reporting framework as in GIR. Many nations have also enhanced their ESG regulation as compared to India, which also compared to other nations, slows down the nation's progress both economically and environmentally. The ESG investment regulatory framework in India has started to formalize to support ESGs, but the regulatory environment is still evolving and moving towards better transparency and ensuring protection of investor’s interests along with a better sustainable future for India.

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