

Greenwashing and ESG Accountability in India: An Analysis of Regulatory Gaps and Enforcement Challenges

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ABSTRACT

The rising trend in which Environmental, Social and Governance (ESG) principles are being applied in corporate governance have transformed the regulatory and investment environment in the world. One of the aspects, in India, that have been transformed by regulation is the introduction of the Business Responsibility and Sustainability Reporting framework of the Securities and Exchange Board of India (SEBI), which indicates a positive change in terms of corporate transparency. Nonetheless, the increasing tendency of greenwashing, in which companies falsely claims about their earthly performance, is a major challenge to the ESG accountability. The paper is based on critical analysis of greenwashing concept, assessment of the current ESG regulatory system in India and the image of the main regulatory gaps and enforcement issues. It is noted that lack of standardisation of reporting, lack of a proper verification mechanism and lack of a proper enforcement framework is the reason why misleading sustainability assertions persist. The article proposes a more integrated and stronger regulatory strategy and wraps the paper with vast recommendations in achieving better ESG governance and the much-needed company sustainability.

Keywords: Greenwashing, ESG, Sustainability, Corporate Governance, BRSR, Regulatory Gaps

1. INTRODUCTION

The shift in the corporate governance paradigm to include wider issues of environmental sustainability, social responsibility and ethical governance is a development of the past few years instead of the time before when the prevalent paradigm in corporate governance involved profit maximisation. Social, Environmental, and Governance (ESG) is becoming an important model where interested parties evaluate the sustainability and moral status of companies over the short term. In the Indian context, the ESG has become a significant term as a result of the growth in investor awareness, globalization of all the financial markets, and the regulators efforts in facilitating sustainable business operation. But, with this increased concern on sustainability, there is also an increase in the phenomenon known as greenwashing, whereby companies are dramatizing or misrepresenting their greenness. It is noted that greenwashing directly contradicts the concept of ESG because it gives an illusion of doing something while actually not doing

it. This not only deceives the investors and consumers but also corrupts the market competition and undermines credibility of the regulators. Hence, gaps in regulations and enforcing issues in greenwashing should be analyzed to provide effective ESG accountability in India.

2. CONCEPT OF ESG AND GREENWASHING

2.1 ESG Framework

Environmental Social and Governance (ESG) is a group of non-financial performance indicators that are employed in the determination of the corporate responsibility and sustainability. Some of the issues encompassed in the environmental dimension are the carbon emission, energy efficiency, and conservation of resources. The social aspect is devoted to the labour rights, diversity, and welfare of the community, and the aspect of governance includes the aspects of corporate ethics, transparency and accountability. The focus on sustainable and responsible business practices has transformed ESG into a crucial aspect of investment decisions as the factor of sustainability gains growing political power among investors.³

2.2 Meaning and Nature of Greenwashing

Greenwashing is the misleading conduct of companies that attempt to achieve a false perception of being environmentally friendly. It entails false reports, misleading disclosures as well as inflated reports on sustainability programs. These practices can be in different forms, such as the use of ambiguous language, lack of measurable information and the presentation of insignificant environmental friendly practices at the expense of greater environmental effects. It is arrived at that greenwashing makes stakeholders distrustful of the strategies, and compromised the integrity of ESG frameworks.⁴

3. ESG REGULATORY FRAMEWORK IN INDIA

India has made drastic regulatory and legislative measures to institutionalize Environmental, Social and Governance (ESG) principles in the corporate governance. These developments are indicative of the increasing appreciation of sustainability as a part and parcel of economic development. Nevertheless, the structure is still developing and has been marked with both gradual changes and institutional constraints.

3.1 SEBI and BRSR Framework

Securities and Exchange Board of India (SEBI) has been central in enhancing the ESG regulation by launching Business Responsibility and Sustainability Reporting (BRSR) structure. This framework will require the top listed companies to make disclosures of ESG-related information, increasing transparency and accountability in corporate reporting. The BRSR has specifications that the companies should present the information about environmental impact, social efforts, and governance procedures, such as measurements connected with emissions, resource consumption, employee welfare and ethical behavior. It is a change of the voluntary reporting to one that is more structured and based on disclosure. But it is noted that in the framework, the emphasis is on disclosure as opposed to verification which could be effective in ensuring prevention of misleading or exaggerated sustainability statements.⁵

3.2 Companies Act, 2013

The Companies Act, 2013 has a positive influence on the ESG governance especially in relation to Corporate Social Responsibility (CSR). The particular groups of companies are also required to devote a given percentage of their profits to their social development initiatives, including education, medical care,

³ Securities and Exchange Board of India, *Business Responsibility and Sustainability Reporting by Listed Entities* (2021).

⁴ Andrew S., *Greenwashing and Corporate Accountability in Emerging Markets*, 14 J. Bus. Ethics 120, 122–25 (2022).

⁵ Securities and Exchange Board of India, *Business Responsibility and Sustainability Reporting by Listed Entities* (2021).

and environmental conservation. These instruments reinforce the social aspect of ESG since it implicates responsibility in company operation. Nonetheless, CSR compliance is frequently seen as a regulatory requirement as opposed to being a strategic sustainability program, which can minimize the impact of long-term effectiveness in its authentic ESG performance.⁶

3.3 Supplementary Regulatory Measures

Besides SEBI and the Companies Act, to ESG governance in India, several guidelines of the Ministry of Corporate Affairs, like the National Guidelines on Responsible Business Conduct, and guidelines depending on sectors (such as environmental laws of the same) have a positive influence. Although the measures taken box collectively to encourage responsible business practices, they are usually working in a disjointed and uncoordinated way. Lack of a single regulatory structure creates clashes, inequalities, and gaps with implementation. Such disjointed strategy restricts the efficiency of the whole ESG regulation and presents some difficulties with providing a high degree of accountability.⁷

4. REGULATORY GAPS IN ESG ACCOUNTABILITY

In spite of the progressive regulatory initiatives, a number of structural and conceptual loopholes remain in existence to restrict the efficacy of ESG governance in India. These loopholes not only undermine regulatory considerations but also provide a form of leeway to the corporations to indulge in shallow compliance measures such as greenwashing.

4.1 Absence of Uniform Standards

The absence of a universally applicable reporting standard that is legally binding is one of the main problems of ESG governance. The companies tend to use different methodologies and voluntary guidelines, although they have some frameworks that offer clarity among them like the BRSR. This creates a problem of inconsistencies in disclosures and makes it hard to compare the performance of companies in terms of ESG performances accurately by the investors and the regulators.⁸

4.2 Inadequate Verification Mechanisms

India is a country where ESG disclosures are mostly self-reported and not independently verified on a compulsory basis. Such disclosures lack the reliability and credibility that could be achieved through an absence of third-party audits. It is noted here that this regulatory loophole poses a great likelihood of greenwashing because businesses can choose to present positive information without sufficient questioning.

4.3 Limited Applicability

The existing ESG regulatory framework is mainly applicable to large listed corporations especially the leading companies that are required to adhere to BRSR standards. Such a narrow range excludes a large segment of the business industry, such as small and medium-sized businesses, which has a vast population of their effect on the environment and social impact. This selective applicability leads to the issue of regulatory imbalance and ineffective governance on ESG.

4.4 Conceptual Ambiguity

The other vital gap is that the definitions of various terms related to ESG, like the definitions of sustainability, green, and environmentally friendly, as well as others are not defined legally. It is this ambiguity that enables corporations to issue wide sweeping claims, vague and mostly baseless claims. The

⁶ Companies Act, 2013, No. 18 of 2013, § 135 (India).

⁷ Ministry of Corporate Affairs, *National Guidelines on Responsible Business Conduct* (2019).

⁸ Securities and Exchange Board of India, *Business Responsibility and Sustainability Reporting by Listed Entities* (2021).

absence of a definitive nature not only makes it difficult to enforce this, but it also allows companies to take advantage of loopholes in the regulations.⁹

5. ENFORCEMENT CHALLENGES

Besides the absence of regulatory gaps, a number of practical and institutional obstacles hinder the successful implementation of ESG norms. Such problems have great influence on the process of ensuring compliance and combatant measures by the regulatory authorities to discourage false actions.

5.1 Monitoring Constraints

Regulatory agencies encounter significant problems in tracking and inspecting the huge amount of ESG reporting, which has been received by businesses. There is also a lack of sophisticated data analysis tools and a shortage of human resources, which also makes effective oversight more difficult. This leads to numerous disclosures that are not adequately scrutinised.

5.2 Weak Deterrence Mechanisms

The current system of penalties in case of non-compliance or misleading ESG disclosures is not stringent enough. The outcomes of carrying out a greenwash are in most instances very small, relative to reputational and financial gains that the corporations are likely to receive. Such low deterrence decreases the efficiency of enforcement.

5.3 Technical Complexity

The ESG performance measurement entails sophisticated and technical parameters, especially in the environmental sector. Specialised expertise in climate-related areas, sustainability measurement, and impact assessment are common examples of expertise needed by regulatory bodies. The absence of such proficiency in enforcement agencies presents a major problem of precise assessment and regulation.

5.4 Institutional Fragmentation

In India, the ESG governance is managed by various regulatory authorities such as financial authorities, corporate authorities as well as environmental authorities. This haphazard solution causes overlapping jurisdiction, lack of co-ordination and inconsistencies in enforcement. The fact that a single regulatory mechanism does not exist affects the overall effectiveness of ESG accountability further.¹⁰

6. COMPARATIVE PERSPECTIVE

The comparative analysis of the international ESG regulatory systems suggests that the more structured and stricter approach has to be adopted to address greenwashing and hold the responsible.

European Union has become a world pioneer in regulating ESG by enacting and implementing tools like the Sustainable Finance Disclosure Regulation (SFDR) and Corporate Sustainability Reporting Directive (CSRD). According to these frameworks, ESG disclosure has to be detailed, there must be classification systems of sustainable activities, and third-party verification is obligatory. Notably, a taxonomy-based approach has been implemented by the EU, which has a clear definition of what sustainability is in economic activity. Lots of ambiguity in interpretation and the possibility of misleading statements is greatly minimized.

Equally, regulatory authorities in other regions (including the United Kingdom and the United States) have stepped up their scrutiny with respect to ESG disclosures. Positive measures to hold companies accountable against false or exaggerated claims on environmental efforts have been begun due to

⁹ Andrew S., *Greenwashing and Corporate Accountability in Emerging Markets*, 14 J. Bus. Ethics 120, 122–25 (2022).

¹⁰ Andrew S., *Greenwashing and Corporate Accountability in Emerging Markets*, 14 J. Bus. Ethics 120, 122–25 (2022).

enforcement actions by authorities. In such jurisdictions, it is not merely the disclosure that is focused on but also the accuracy and substantiation of disclosures made.

Instead, the Indian ESG framework is more or less disclosure-oriented and has a weak verification and enforcement measure. The BRSR framework is a positive change, although it does not mandate strict compliance and definition of the concept, as is in the case of other international frameworks. It is noted that India is able to learn some important aspects of such international frameworks, especially the introduction of standardised taxonomies, mandatory third-party audit and increased enforcement.

A comparative perspective, therefore, emphasizes the fact that India should start moving towards a disclosure regime to a more accountability-oriented ESG regime.¹¹

7. RECOMMENDATIONS

To successfully resist greenwashing, achieve greater accountability in ESG in India a multi-dimensional and extensive regulatory framework is needed.

First, it is necessary to develop a **standardized and legally binding ESG reporting system**. A more rigid BRSR structure should be implemented, with a specific set of metrics and disclosure needs, which are industry-specific. Comparability will be enhanced by standardisation and ambiguity in the practices will be minimised by the same.

Secondly, it should be introduced to conduct the ESG disclosures with **mandatory third-party verification**. The accredited agencies will conduct independent audits to improve the issue of sustainability claims and reduce the chances of manipulation. Clear regulatory guidelines and standards of accountability must be backed up by such verification mechanisms.

Third, enforcement should be tightened and **punishments should be reinforced**. The regulatory bodies must have the power to subject companies that are involved in greenwashing to hefty monetary fines, legal prosecution as well as correction measures. Stern regulation will act as a good discouraging measure.

In addition, the number of ESG regulations to **apply to large listed companies** should be increased to small and medium enterprises gradually. This will make it a more inclusive sustainability approach and prevent regulatory arbitrage.

Also, **institutional coordination should be enhanced** through the creation of a centralized ESG regulatory body or system that incorporates the roles of different organisations. This will minimize the fragmentation and improve the effectiveness of the regulation.

It is also important that **capacity building** takes place. Regulatory agencies ought to also have technical capacity and resources to analyze the ESG disclosures. Enforcement capabilities could be enhanced very easily through the use of training programs and working closely with environmental and financial experts.

Lastly, **stakeholders awareness and involvement** should be improved. Investors, consumers, and the civil society need to be sensitized on ESG standards and the dangers of greenwashing. Greater pressure on corporations to be truly sustainable will be put in place by increased stakeholder scrutiny.

8. CONCLUSION

The process of integrating the principles of ESG into corporate governance is a radical change in favor of the sustainable and responsible business practices. Regulatory efforts in India like BRSR framework bear witness to increased efforts in transparency and accountability of corporations. Nevertheless, the

¹¹ European Commission, *Sustainable Finance Disclosure Regulation* (2020).

continuation of greenwashing underscores the huge shortcomings of the current regulatory and enforcement systems. And it goes without saying that the present framework though progressive in purpose, does not possess the required strength to adequately tackle the problem of deceptive sustainability practices. Lack of standardisation in reporting, poor verification procedures and poor enforcement mechanisms do not help in enhancing the credibility of the ESG disclosures. An evaluation of the regulatory frameworks in various countries across the globe has shown that stronger legal definitions, compulsory verification, and enforcement are important to help stem greenwashing. Hence, India needs to enter into a new era of enforcement-focused ESG regime instead of the existing modality of disclosure. Finally, to be accountable towards ESG, it is critical to have a comprehensive approach that applies to regulation reform, institutional fortification, and participatory stakeholder involvement. Greenwashing is not an issue of compliance but one of the key requirements of attaining sustainable development and preservation of confidence in the corporate ecosystem.

10. REFERENCES

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