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Regulating ESG Disclosures in India: Greenwashing and Legal Accountability

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Abstract

Environmental, Social, and Governance (ESG) disclosures have emerged as a central instrument of corporate accountability in the era of sustainable finance. In India, ESG reporting has transitioned from a largely voluntary exercise to a quasi-mandatory regulatory obligation, particularly following the introduction of the Business Responsibility and Sustainability Report (BRSR) framework by the Securities and Exchange Board of India (SEBI). While enhanced disclosures aim to promote transparency and responsible corporate conduct, they have also given rise to the growing phenomenon of **greenwashing**—the practice of making misleading or unsubstantiated sustainability claims. This article critically examines India's evolving ESG disclosure regime, the legal risks posed by greenwashing, and the emerging frameworks of regulatory and judicial accountability. It argues that effective ESG regulation requires a convergence of securities law, consumer protection, competition law, environmental regulation, and constitutional principles, supported by robust enforcement mechanisms and procedural safeguards.

Keywords: ESG disclosures, Greenwashing, Corporate sustainability, Business Responsibility and Sustainability Report (BRSR), SEBI regulation, Securities law, Corporate governance, Environmental accountability, Investor protection, Director liability, Consumer protection law, Competition law, Climate governance, Regulatory enforcement, Administrative law, Transparency and disclosure, Constitutional principles, Market integrity

1. Introduction

Sustainable finance has emerged as a defining paradigm of contemporary capital markets, reshaping how corporate value, risk, and legitimacy are assessed. Environmental, Social, and Governance (ESG) considerations now influence investment decisions, lending practices, shareholder activism, and regulatory oversight across jurisdictions. Investors increasingly integrate ESG metrics into portfolio allocation and risk assessment; lenders link sustainability performance to the cost of capital; regulators view ESG disclosures as instruments of market transparency; and consumers rely on sustainability claims to inform ethical consumption. In this ecosystem, ESG disclosures function not merely as informational tools but as **market-signalling mechanisms** that shape capital flows and corporate behaviour.

In India, ESG reporting has undergone a decisive transformation from a voluntary, narrative-driven exercise into a **mandatory regulatory obligation**. The introduction of the Business Responsibility and Sustainability Report (BRSR) framework by the Securities and Exchange Board of India (SEBI) marks a significant regulatory shift. By requiring standardized, quantitative, and comparable sustainability disclosures from the country's largest listed entities, SEBI has embedded ESG considerations within the core architecture of securities regulation and corporate governance. ESG reporting in India is no longer peripheral to financial disclosures; it is now an integral component of investor protection, market integrity, and systemic risk management.

However, the rapid institutionalization of ESG norms has simultaneously exposed a critical structural vulnerability: **greenwashing**. As ESG metrics increasingly affect valuations, access to capital, and reputational standing, corporations face powerful incentives to project an image of environmental and social responsibility—sometimes without commensurate substantive performance. Greenwashing manifests through exaggerated environmental claims, selective disclosure of favourable ESG indicators, omission of material adverse information, manipulation of emissions boundaries, and the use of vague, unverifiable sustainability rhetoric such as "carbon-neutral," "eco-friendly," or "net-zero aligned." These practices erode the credibility of ESG frameworks and undermine their core objective of aligning corporate conduct with sustainable development goals.

The consequences of greenwashing extend beyond mere informational asymmetry. Misleading ESG disclosures distort investor decision-making, misprice risk, and compromise capital allocation efficiency. They undermine trust in sustainability-linked financial products, weaken regulatory legitimacy, and risk converting ESG compliance into a box-ticking or reputational exercise rather than a driver of genuine corporate transformation. In the long term, unchecked greenwashing threatens the normative force of sustainability regulation itself, reducing ESG from a governance mechanism to a marketing tool.

Against this backdrop, the legal regulation of ESG disclosures assumes heightened significance. ESG reporting is no longer confined to ethical self-regulation; it raises complex questions of **legal accountability, enforcement, and constitutional discipline**. Misleading ESG disclosures potentially implicate securities fraud, breach of fiduciary duties, unfair trade practices, and violations of consumer and competition law. At the same time, regulatory interventions must navigate constitutional constraints, particularly principles of non-arbitrariness, proportionality, and due process.

This article critically examines how Indian law responds—or must respond—to greenwashing in ESG disclosures. It situates ESG regulation within the interconnected domains of **securities law, corporate governance, consumer protection, environmental regulation, and public law**, and evaluates whether existing legal tools are adequate to address the emerging risks of misleading sustainability claims. By analysing regulatory frameworks, enforcement mechanisms, and comparative international approaches, the article argues for a coherent, robust, and constitutionally compliant legal architecture that ensures ESG disclosures serve their intended purpose: enhancing transparency, protecting investors and consumers, and advancing sustainable and responsible corporate conduct in India's evolving market economy.

2. ESG Disclosures in India: The Regulatory Architecture

India's ESG disclosure regime has undergone a rapid and significant transformation over the last decade. What began as a largely voluntary, values-driven exercise has now crystallized into a structured, mandatory regulatory framework embedded within securities regulation. This evolution reflects India's growing recognition that sustainability risks are inseparable from financial risks and that ESG disclosures are essential to market transparency, investor protection, and long-term economic stability.

A. Evolution from Voluntary to Mandatory Reporting

India's ESG regulatory framework has developed in three distinct phases, each reflecting a progressive tightening of disclosure expectations and regulatory oversight.

1. Voluntary CSR and Sustainability Reporting

In its initial phase, corporate sustainability reporting in India was predominantly voluntary and philanthropic in nature. Corporations published sustainability or CSR reports driven largely by reputational considerations, global best practices, or stakeholder expectations rather than legal compulsion. These disclosures were narrative-heavy, lacked standardized metrics, and varied widely in scope, depth, and credibility. While such reporting contributed to awareness and norm-building, it suffered from significant limitations, including lack of comparability, weak verification mechanisms, and minimal legal accountability.

2. Business Responsibility Reports (BRR)

A major regulatory shift occurred in 2012 when the Securities and Exchange Board of India (SEBI) introduced the **Business Responsibility Reports (BRR)** for the top listed companies. BRRs marked India’s first attempt to institutionalize ESG reporting within the securities regulatory framework. Grounded in the National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business, BRRs required companies to disclose information across a set of core sustainability principles.

Although BRRs represented a meaningful step towards standardized ESG reporting, they remained largely principle-based and descriptive. The absence of granular metrics, limited emphasis on quantification, and lack of mandatory assurance reduced their effectiveness as tools for rigorous investor analysis and regulatory enforcement.

3. Business Responsibility and Sustainability Report (BRSR)

In 2021, SEBI replaced the BRR framework with the **Business Responsibility and Sustainability Report (BRSR)**, ushering in a decisive shift from aspirational reporting to enforceable sustainability disclosure. BRSR made ESG reporting mandatory for the top 1,000 listed companies by market capitalization, reflecting SEBI’s recognition that sustainability information is material to investment decisions.

BRSR represents a paradigm shift in three key respects:

- **From narrative to metrics**: It emphasizes quantitative, comparable, and standardized data over general sustainability statements.
- **From voluntary to mandatory**: ESG disclosures are now an integral part of annual reporting obligations.
- **From domestic to global alignment**: BRSR aligns Indian disclosures with international frameworks such as the Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-related Financial Disclosures (TCFD).

By embedding ESG disclosures within core securities compliance, BRSR signals a regulatory acknowledgment that environmental and social risks directly impact financial performance, systemic stability, and investor confidence.

B. Legal Nature of ESG Disclosures

ESG disclosures under the BRSR framework are not merely informational or aspirational statements of corporate intent. They constitute **regulated corporate disclosures** governed by securities law and carry distinct legal consequences.

First, ESG disclosures form part of a company’s mandatory reporting obligations under SEBI’s regulatory regime. As such, they are subject to the same standards of accuracy, completeness, and materiality that apply to financial disclosures. Any false, misleading, or selectively presented ESG information may therefore attract regulatory scrutiny.

Second, ESG disclosures operate as **representations to investors**. Investors increasingly rely on sustainability metrics to assess risk exposure, long-term value creation, and governance quality. Misleading ESG claims may distort investor decision-making and undermine market efficiency, thereby engaging doctrines of misrepresentation and investor protection.

Third, ESG disclosures are **potentially enforceable statements** that may attract civil, administrative, and, in certain circumstances, penal consequences. Under securities law, misleading ESG disclosures can fall within the ambit of fraudulent and unfair trade practices, suppression of material information, or market manipulation.

This legal character places ESG disclosures squarely within the established framework of **misrepresentation, fraud, and disclosure-based accountability**, transforming ESG compliance from a soft-law aspiration into a hard-law obligation. Consequently, greenwashing in ESG reporting is not merely a reputational risk but a legally cognizable wrong, capable of triggering regulatory action, shareholder claims, and broader public law scrutiny.

3. Greenwashing in ESG Disclosures: Concept, Typologies, and Regulatory Risk

As ESG disclosures become central to investment decisions, corporate valuation, and regulatory compliance, the integrity of sustainability information assumes critical importance. The rise of mandatory ESG reporting has, however, been accompanied by an equally rapid proliferation of **greenwashing**—a phenomenon that poses significant risks to market integrity, investor protection, and the credibility of sustainability regulation itself.

A. Conceptualizing Greenwashing in Legal Terms

Greenwashing is commonly understood as the practice of conveying a false or misleading impression about a company’s environmental or sustainability performance. While the term originated in environmental advocacy and marketing critique, it now has clear **legal relevance** in the context of regulated ESG disclosures.

In legal terms, greenwashing may be characterized as:

- **Material misrepresentation** of sustainability performance or risk,
- **Omission of material adverse ESG information**,
- **Selective disclosure** designed to mislead stakeholders, or
- **Use of vague, unverifiable, or exaggerated claims** that create an inaccurate impression of compliance or environmental benefit.

Unlike traditional advertising puffery, greenwashing in ESG disclosures occurs within a **regulated disclosure environment**, where sustainability statements form part of mandatory corporate reporting. Consequently, greenwashing engages established doctrines of securities fraud, disclosure-based liability, and unfair trade practices, rather than remaining confined to ethical or reputational critique.

B. Typologies of Greenwashing in ESG Reporting

Greenwashing in ESG disclosures manifests in several recurring and legally significant forms, many of which are facilitated by methodological complexity and gaps in regulatory guidance.

1. Metric Manipulation and Data Selectivity

One of the most common forms of greenwashing involves the selective presentation or manipulation of ESG metrics. Companies may:

- Report emissions reductions without disclosing baseline assumptions,
- Exclude high-emission subsidiaries or operations from reporting boundaries,
- Highlight intensity-based reductions while absolute emissions increase.

Such practices may create a misleading impression of sustainability performance despite technically accurate data points, thereby undermining the principle of material disclosure.

2. Narrative Overstatement and Vague Sustainability Claims

Corporations often rely on broad, aspirational language—such as "environmentally responsible," "climate-positive," or "sustainable by design"—without providing verifiable metrics or time-bound targets. While narrative disclosures are not per se unlawful, they become problematic when they:

- Substitute measurable performance with rhetoric,
- Create unjustified expectations among investors and consumers,
- Mask underlying environmental or governance risks.

In a regulated disclosure regime, excessive reliance on vague narratives can amount to misleading representation.

3. Scope 3 Emissions Evasion

A particularly contentious area of greenwashing involves the treatment of **Scope 3 emissions**, which account for indirect emissions across a company's value chain. Companies may:

- Omit Scope 3 emissions altogether,
- Disclose them selectively without methodological clarity,
- Downplay their materiality despite constituting a significant portion of total emissions.

Given the growing international consensus on the materiality of Scope 3 emissions, such practices raise serious concerns of incomplete or misleading ESG disclosure.

4. Misleading Net-Zero and Carbon Neutrality Claims

Net-zero commitments have become a central feature of corporate ESG narratives. However, greenwashing frequently arises where companies:

- Rely excessively on carbon offsets instead of emission reductions,
- Use low-integrity or unverifiable offsets,
- Fail to disclose transition pathways, timelines, or interim targets.

Net-zero claims lacking transparency or credible transition plans risk misleading investors about a company's long-term climate exposure and regulatory risk.

5. Misuse of Certifications and Third-Party Endorsements

Another form of greenwashing involves the misuse or overstatement of third-party sustainability certifications, ratings, or labels. This includes:

- Presenting partial certification as enterprise-wide compliance,
- Citing outdated or non-comparable standards,
- Using voluntary certifications to imply regulatory compliance.

Such practices exploit information asymmetries and may constitute deceptive conduct when certifications are presented without adequate context or limitations.

C. Why Greenwashing Is a Regulatory Risk, Not Merely a Reputational Issue

Greenwashing in ESG disclosures poses systemic risks that extend beyond individual corporate misconduct. At a market-wide level, it:

- Distorts capital allocation by mispricing sustainability risk,
- Undermines investor confidence in ESG-linked financial products,
- Weakens the credibility of regulatory disclosure regimes,
- Creates unfair competitive advantages for non-compliant firms.

From a regulatory perspective, greenwashing threatens the effectiveness of ESG disclosures as tools of market governance. If sustainability information cannot be trusted, the entire disclosure-based regulatory model collapses, necessitating heavier ex ante controls or prescriptive regulation.

D. Greenwashing and the Shift from Soft Law to Hard Law

Historically, sustainability reporting operated largely within the domain of soft law—voluntary standards, best practices, and reputational enforcement. The integration of ESG disclosures into securities regulation marks a decisive shift toward **hard-law accountability**.

In this new paradigm:

- ESG disclosures are subject to statutory standards of accuracy and materiality,
- Misleading statements can trigger regulatory sanctions,
- Directors and officers may face personal liability,
- Courts and tribunals become key forums for ESG dispute resolution.

Greenwashing, therefore, represents not merely a failure of corporate ethics but a legally actionable breach of disclosure obligations with significant public and private law consequences.

Greenwashing is the inevitable by-product of the rapid financialization and regulatory elevation of ESG norms. As sustainability claims become valuable market assets, the temptation to overstate performance intensifies. Addressing greenwashing requires moving beyond moral condemnation toward **robust legal classification, enforceable disclosure standards, and credible regulatory oversight**. The next section examines how Indian law—particularly securities regulation, corporate governance norms, and consumer protection statutes—currently addresses, and may more effectively address, the challenge of greenwashing in ESG disclosures.

4. Legal Accountability for Greenwashing in India

The legal response to greenwashing in India does not emanate from a single, dedicated statute. Instead, accountability is enforced through a **multi-layered regulatory ecosystem** that draws upon securities law, corporate law, consumer protection, competition regulation, and environmental governance. As ESG disclosures migrate from voluntary narratives to mandatory regulatory statements, misleading sustainability claims increasingly attract **hard-law consequences**.

A. Securities Law and SEBI's Enforcement Jurisdiction

Securities regulation constitutes the most direct and potent legal mechanism for addressing greenwashing in ESG disclosures. Under the **SEBI Act, 1992** and the **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**, listed companies are obligated to make accurate, complete, and non-misleading disclosures of all material information.

ESG disclosures under the BRSR framework form part of this regulated disclosure architecture. Consequently, greenwashing may attract liability as:

- **Fraudulent or unfair trade practices**,
- **Material misrepresentation or suppression of facts**, or
- **Market manipulation through misleading disclosures**.

SEBI possesses wide-ranging enforcement powers, including the authority to:

- Impose monetary penalties,
- Direct corrective or supplemental disclosures,
- Suspend or restrict market access,
- Debar directors, key managerial personnel, or auditors,
- Initiate adjudication and quasi-judicial proceedings.

Importantly, SEBI's evolving enforcement philosophy increasingly recognizes that **sustainability misstatements can materially influence investor decision-making**, thereby warranting treatment equivalent to financial misreporting.

B. Corporate Law and Director Accountability

The **Companies Act, 2013** provides a complementary layer of accountability by anchoring ESG oversight within corporate governance structures. Directors owe statutory duties of care, diligence, and good faith, and are required to act in the best interests of the company, its shareholders, and other stakeholders.
Greenwashing may trigger corporate law liability in several ways:

- False or misleading ESG disclosures in annual reports may constitute **misstatements in statutory filings**.
- Failure to implement adequate internal controls over ESG data may amount to **breach of fiduciary duty**.
- Board-level approval of misleading sustainability claims may attract **personal liability for directors and officers**.

As ESG oversight increasingly falls within board-mandated risk management and compliance functions, directors can no longer treat sustainability reporting as a peripheral or marketing exercise. The shift toward board-level accountability aligns Indian corporate law with global trends emphasizing **director responsibility for ESG integrity**.

C. Consumer Protection and Advertising Law

Greenwashing frequently transcends investor-facing disclosures and enters the realm of consumer communication. Sustainability claims made through branding, advertising, and product labelling may attract scrutiny under the **Consumer Protection Act, 2019**.
Under consumer law, misleading environmental claims may constitute:

- **Unfair trade practices**,
- **False or misleading advertisements**, or
- **Deceptive representations regarding quality or performance**.

The **Advertising Standards Council of India (ASCI)** has issued specific guidelines on environmental and green claims, requiring advertisers to substantiate sustainability assertions with credible evidence. ESG-related greenwashing that influences consumer choices may therefore attract:

- Regulatory penalties,

- Corrective advertising orders,
- Consumer class actions.

This dimension of accountability is particularly significant where ESG narratives are used to command price premiums or market differentiation.

D. Competition Law Implications

Greenwashing may also raise concerns under the **Competition Act, 2002**, particularly where misleading ESG claims distort competitive conditions. Firms that falsely project superior sustainability performance may gain unfair market advantage over competitors that incur genuine compliance costs.

From a competition law perspective, greenwashing may amount to:

- **Deceptive or unfair market conduct**,
- Abuse of informational asymmetry,
- Distortion of consumer choice in sustainability-sensitive markets.

While Indian competition jurisprudence on greenwashing is still nascent, global regulatory trends suggest increasing convergence between ESG integrity and competition enforcement.

E. Environmental and Administrative Law Dimensions

In sectors subject to environmental clearances, emissions reporting, or regulatory permits, greenwashing may also constitute violations of environmental law and administrative obligations. Misrepresentation of environmental performance to regulators may trigger:

- Cancellation or suspension of approvals,
- Administrative penalties,
- Directions for remediation or corrective action.

Such actions must, however, comply with principles of **natural justice, proportionality, and reasoned decision-making**, especially where ESG disclosures intersect with licensing or compliance regimes.

F. The Emerging Enforcement Challenge

Despite the availability of multiple legal pathways, enforcement against greenwashing in India remains fragmented. Overlapping jurisdiction among regulators, lack of standardized ESG assurance, and limited investigative capacity pose challenges to effective accountability.

Nevertheless, the legal architecture increasingly signals a clear shift: **greenwashing is no longer a soft-law concern but a legally cognizable wrong**. As ESG disclosures become central to corporate regulation, enforcement mechanisms are likely to intensify, converging toward global best practices.

India’s legal framework already contains powerful tools to address greenwashing across securities regulation, corporate governance, consumer protection, competition law, and environmental administration. The challenge lies not in the absence of law but in **coherent enforcement, regulatory coordination, and doctrinal clarity**. The next section examines how constitutional principles and public law constraints shape the permissible scope of ESG regulation and enforcement in India.

5. Constitutional and Public Law Considerations

As ESG disclosures transition from voluntary corporate communication to mandatory regulatory obligations, their enforcement raises significant questions of constitutional and administrative law.

Regulatory action against greenwashing—particularly through penalties, disclosure mandates, or market restrictions—must operate within the boundaries of India's constitutional framework. The legitimacy and durability of ESG regulation therefore depend not only on policy objectives but also on adherence to **constitutional guarantees, principles of natural justice, and standards of administrative fairness**.

A. Article 14: Non-Arbitrariness and Regulatory Consistency

Article 14 of the Constitution prohibits arbitrariness in State action and requires regulatory frameworks to be founded on rational, transparent, and non-discriminatory criteria. ESG regulation, by its nature, involves complex judgments about materiality, sustainability metrics, and risk disclosure. In the absence of clear standards, enforcement actions against greenwashing risk being perceived as inconsistent or selective.

To satisfy Article 14, ESG disclosure requirements and enforcement actions must:

- Be based on **clearly articulated standards and metrics**,
- Apply uniformly to similarly situated entities,
- Avoid retrospective or ad hoc regulatory intervention,
- Provide reasoned justification for differential treatment.

Arbitrary or inconsistent enforcement may undermine the credibility of ESG regulation and expose regulatory action to constitutional challenge.

B. Article 19(1)(g): Freedom of Trade and Reasonable Restrictions

Mandatory ESG disclosures and penalties for greenwashing implicate the fundamental right to carry on trade or business under Article 19(1)(g). Corporate entities may argue that onerous disclosure obligations, compliance costs, or punitive sanctions impose unreasonable restrictions on commercial freedom.

However, Article 19(6) permits the State to impose reasonable restrictions in the interests of the general public. ESG regulation can be justified on several grounds:

- Protection of investors and consumers from misleading information,
- Maintenance of market integrity and transparency,
- Prevention of environmental harm and systemic climate risk,
- Promotion of sustainable and responsible economic development.

The constitutional test turns on **proportionality**. Regulatory measures must be suitable to achieve their objectives, necessary in light of available alternatives, and not excessive in their impact on legitimate business activity.

C. Article 300A: Property, Economic Interests, and Due Process

Although ESG disclosures do not directly implicate tangible property, enforcement actions—such as monetary penalties, suspension of trading privileges, or reputational sanctions—affect economic interests that fall within the protective ambit of Article 300A. Deprivation of such interests must occur only through authority of law and in accordance with due process.

In the ESG context, due process requires:

- Clear statutory or regulatory authorization for enforcement action,
- Adequate notice to affected entities,
- Opportunity to be heard and present evidence,
- Reasoned orders subject to appellate review.

Failure to observe these safeguards risks rendering ESG enforcement constitutionally infirm.

D. Administrative Law Principles: Natural Justice and Proportionality

Beyond specific constitutional provisions, ESG regulation is governed by broader principles of administrative law. Enforcement agencies must adhere to:

- **Audi alteram partem** (right to be heard),
- Reasoned decision-making,
- Proportional sanctions calibrated to the severity of misconduct,
- Transparency in investigative and adjudicatory processes.

Given the technical complexity of ESG metrics, regulators must also ensure that enforcement decisions are supported by expert analysis and reliable evidence. Overzealous or inadequately reasoned action may deter genuine sustainability initiatives and discourage voluntary compliance.

E. Balancing Regulatory Oversight and Corporate Autonomy

A central challenge in ESG regulation lies in balancing robust oversight with respect for corporate autonomy. Excessive regulatory intrusion risks transforming ESG reporting into a compliance-driven exercise devoid of substantive impact, while weak enforcement invites greenwashing and market distortion.

Constitutional and administrative law principles serve as **guardrails**, ensuring that ESG regulation advances public interest objectives without degenerating into arbitrary or disproportionate State action. Properly calibrated, these principles enhance regulatory legitimacy and encourage sustained corporate engagement with sustainability goals.

ESG regulation in India operates at the intersection of market governance and constitutional accountability. While the State possesses ample authority to mandate disclosures and penalize greenwashing, such powers must be exercised within the constraints of non-arbitrariness, proportionality, and due process. Constitutional discipline is not a barrier to effective ESG regulation; rather, it is a necessary condition for its legitimacy, durability, and acceptance within India's rule-of-law framework. The next section turns to comparative international approaches to regulating greenwashing and ESG disclosures, offering lessons for India's evolving regulatory architecture.

6. Comparative Perspectives

As ESG disclosures become central to global capital markets, jurisdictions across the world have moved decisively to regulate sustainability claims and curb greenwashing. Comparative experience demonstrates that effective ESG governance requires a combination of **clear disclosure standards, assurance mechanisms, and credible enforcement**. Examining international approaches provides valuable lessons for India as it refines its ESG regulatory architecture.

A. European Union: From Disclosure to Accountability

The European Union has emerged as a global leader in ESG regulation, adopting a comprehensive and enforceable framework that treats sustainability disclosures as an integral component of corporate and financial regulation.

The **Corporate Sustainability Reporting Directive (CSRD)** significantly expands the scope, depth, and assurance of ESG disclosures. Key features include:

- Mandatory sustainability reporting for a wide range of companies,
- Standardized reporting under European Sustainability Reporting Standards (ESRS),
- Mandatory third-party assurance of ESG data,
- Explicit focus on preventing misleading sustainability claims.

In parallel, the EU has introduced targeted **anti-greenwashing initiatives**, including proposed rules governing environmental marketing claims and sustainable finance labels. Sustainability disclosures in the EU are thus embedded within a strict compliance regime, supported by administrative sanctions and civil liability.

Lesson for India: Legal clarity, standardized metrics, and mandatory assurance are essential to transform ESG disclosures from aspirational narratives into enforceable accountability tools.

B. United States: Securities-Law-Driven Enforcement

In the United States, ESG regulation is driven primarily through **securities law enforcement**, rather than a unified sustainability statute. The Securities and Exchange Commission (SEC) has increasingly treated misleading ESG disclosures as a form of securities fraud.

Key features include:

- Proposed climate disclosure rules emphasizing emissions and climate risk,
- Enforcement actions against misleading ESG fund disclosures,
- Reliance on anti-fraud provisions under securities law.

Unlike the EU's prescriptive approach, the U.S. model relies heavily on **ex post enforcement**, focusing on material misstatements rather than ex ante sustainability mandates.

Lesson for India: Existing securities law frameworks can be powerful tools against greenwashing if ESG disclosures are clearly recognized as material representations to investors.

C. United Kingdom: Targeted Anti-Greenwashing Regulation

The United Kingdom has adopted a more targeted approach through the **Financial Conduct Authority (FCA)**. The FCA's **Sustainability Disclosure Requirements (SDR)** introduce:

- Standardized sustainability labels for investment products,
- Anti-greenwashing rules applicable across financial markets,
- Clear guidance on permissible sustainability claims.

The UK framework focuses on **clarity and comparability**, reducing the scope for ambiguous or misleading ESG communication.

Lesson for India: Clear regulatory guidance on acceptable ESG claims can significantly reduce greenwashing without imposing excessive compliance burdens.

D. Australia: Litigation-Driven Accountability

Australia's approach to greenwashing has been characterized by aggressive enforcement by securities regulators and a growing role for litigation. Regulators have taken action against companies for misleading climate claims, particularly in financial services and resource-intensive sectors.

Key features include:

- Enforcement under consumer and corporate law,
- Judicial scrutiny of sustainability claims,
- Emphasis on substantiation and evidence.

Lesson for India: Judicial enforcement and litigation can complement regulatory oversight, reinforcing accountability through private and public law mechanisms.

E. Convergence and Divergence in Global ESG Regulation

Despite differences in regulatory philosophy, global ESG regimes exhibit convergence around certain core principles:

- Sustainability disclosures are legally enforceable,
- Greenwashing is treated as a market integrity issue,
- Standardization and assurance are critical,
- Regulatory coordination across sectors is essential.

Divergence persists in the balance between prescriptive regulation and enforcement-based models, reflecting differences in legal traditions and market structures.

Comparative experience underscores that effective regulation of ESG disclosures requires more than disclosure mandates; it demands **credible enforcement, legal clarity, and institutional coordination**. India's ESG framework, while evolving rapidly, can draw on international best practices to address greenwashing while respecting constitutional constraints and market realities. The next section examines the specific regulatory gaps in India's ESG regime and proposes targeted reforms to strengthen legal accountability and market integrity.

7. Regulatory Gaps and Reform Imperatives in India's ESG Framework

Despite India's rapid progress in institutionalizing ESG disclosures, the current regulatory architecture remains **fragmented, under-specified, and unevenly enforceable**. While the Business Responsibility and Sustainability Report (BRSR) represents a significant advancement, it does not yet constitute a comprehensive anti-greenwashing regime. Several structural gaps must be addressed to ensure that ESG disclosures operate as credible instruments of market accountability rather than symbolic compliance.

A. Absence of a Statutory Definition of Greenwashing

Indian law presently lacks an explicit statutory definition of greenwashing. ESG-related misrepresentation is addressed indirectly through:

- Securities law (misleading disclosures),
- Consumer protection law (unfair trade practices),
- Competition law (false or deceptive claims),
- Environmental regulations (sector-specific compliance).

This doctrinal diffusion creates uncertainty regarding:

- Thresholds for liability,
- Standards of proof,
- Scope of regulatory jurisdiction.

Reform Imperative: Introduce a clear legal definition of greenwashing—either through SEBI regulations or a dedicated sustainability disclosure statute—encompassing misleading, exaggerated, selectively incomplete, or unverifiable ESG claims.

B. Lack of Mandatory Independent Assurance

Under the current BRSR framework, third-party assurance of ESG disclosures is largely voluntary. This weakens the evidentiary foundation of sustainability claims and places excessive reliance on self-reported data.

Without independent verification:

- Investors face information asymmetry,
- Enforcement agencies struggle to establish falsity or negligence,
- Greenwashing risks becoming systemic rather than exceptional.

Reform Imperative: Mandate phased, risk-based third-party assurance for material ESG metrics, particularly climate, emissions, and social impact disclosures.

C. Fragmented Regulatory Oversight

ESG regulation in India is dispersed across multiple authorities:

- SEBI (listed companies and investors),
- Ministry of Corporate Affairs (corporate governance),
- Central Consumer Protection Authority (advertising and consumer claims),
- Environmental regulators (substantive environmental compliance).

The absence of institutional coordination leads to:

- Regulatory overlap or gaps,
- Inconsistent enforcement,
- Jurisdictional ambiguity in ESG disputes.

Reform Imperative: Establish an inter-regulatory coordination mechanism or a centralized ESG oversight body to harmonize standards, enforcement priorities, and interpretive guidance.

D. Weak Enforcement and Limited Penalties

While SEBI possesses broad enforcement powers, ESG-specific enforcement actions remain limited. Penalties for misleading ESG disclosures are often subsumed under general disclosure violations, reducing their deterrent effect.

Reform Imperative: Develop ESG-specific enforcement guidelines and penalty frameworks, including:

- Enhanced monetary penalties,
- Mandatory corrective disclosures,
- Disqualification of sustainability claims or labels.

E. Director and Officer Accountability Deficit

Current ESG disclosure obligations are primarily corporate in nature, with limited clarity on personal liability for directors and senior management. This weakens internal accountability and may encourage symbolic compliance.

Reform Imperative: Clarify fiduciary and disclosure-related duties of directors and key managerial personnel in relation to ESG statements, aligning sustainability oversight with board-level governance.

F. Insufficient Protection for Investors and Whistleblowers

Greenwashing often comes to light through internal disclosures or activist scrutiny. However, whistleblower protections in the ESG context remain underdeveloped.

Reform Imperative: Strengthen whistleblower and investor-remedy mechanisms, including:

- Enhanced protections for ESG-related disclosures,
- Clear standing for investor claims based on misleading sustainability information.

G. Data Standardization and Digital Infrastructure Gaps

Inconsistent metrics, non-comparable data, and limited technological infrastructure undermine the reliability of ESG disclosures.

Reform Imperative: Develop standardized ESG taxonomies, digital reporting platforms, and potentially blockchain-enabled registries to improve traceability, comparability, and auditability.

India's ESG disclosure regime stands at a critical inflection point. Without targeted reforms, the rapid expansion of sustainability reporting risks being undermined by greenwashing, regulatory fragmentation, and weak enforcement. Addressing these gaps through statutory clarity, institutional coordination, and robust accountability mechanisms is essential to preserving market integrity and public trust. The concluding section synthesizes these insights and charts a principled path forward for ESG governance in India.

8. Conclusion and Way Forward

The regulation of ESG disclosures in India represents a decisive shift in the relationship between corporate enterprise, capital markets, and public accountability. What began as a voluntary exercise in corporate responsibility has evolved into a legally enforceable disclosure regime with significant implications for investor protection, market integrity, and sustainable development. At the centre of this evolution lies the challenge of greenwashing—a phenomenon that threatens to hollow out the normative promise of ESG regulation if left inadequately addressed.

This article has argued that ESG disclosures under India's BRSR framework are not merely aspirational narratives but regulated representations with legal consequences. Misleading or unsubstantiated sustainability claims implicate securities law, corporate governance norms, consumer protection principles, and constitutional standards of fairness and proportionality. Greenwashing is therefore not a peripheral ethical concern; it is a systemic market failure with direct legal ramifications.

Comparative experience demonstrates that effective ESG governance requires more than disclosure mandates. It demands clear standards, independent assurance, credible enforcement, and institutional coordination. While India's ESG framework is conceptually robust and normatively aligned with global best practices, its effectiveness depends on closing critical regulatory gaps—particularly in relation to definitional clarity, verification mechanisms, and enforcement consistency.

Looking ahead, India must pursue a calibrated regulatory strategy that balances flexibility with accountability. Over-regulation risks stifling innovation and reducing ESG reporting to a compliance ritual, while under-regulation invites greenwashing and erodes investor confidence. The constitutional principles of non-arbitrariness, proportionality, and due process provide a stable foundation for navigating this balance, ensuring that ESG regulation remains both effective and legitimate.

A strengthened ESG disclosure regime—anchored in legal certainty, institutional integrity, and constitutional discipline—can position India as a credible leader in sustainable finance and climate-aligned governance. By confronting greenwashing through principled regulation and enforceable accountability, Indian law can ensure that ESG disclosures serve their intended purpose: aligning capital with sustainability, transparency with trust, and economic growth with long-term societal well-being.

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