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# LEGAL CONSEQUENCES OF GREENWASHING CLAIMS: ANALYSING SECURITIES FRAUD, MISREPRESENTATION, VIS-À-VIS ESG AUDITOR RESPONSIBILITY UNDER BRSR CORE FRAMEWORK

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## Abstract

With environmental, social, and governance (ESG) metrics at the forefront of investment decisions, greenwashing which refers to dissemination of false environmental information, has evolved from a concern in marketing ethics to a legitimate concern in corporate law. The proliferation of ESG disclosures in capital markets has engendered a significant rise in greenwashing claims. In this study, the author examines the legal consequences of greenwashing through the intersecting lenses of securities fraud, civil misrepresentation, and auditor liability, with particular emphasis on India's Business Responsibility and Sustainability Reporting (BRSR) Core framework mandated by the Securities and Exchange Board of India (SEBI). The study further analyses the mandatory assurance requirements to assess how ESG auditors are increasingly at risk. The author found that SEBI's "strict comply or explain" policy in its BRSR Core effectively creates a "statutory bridge" to transform voluntary sustainability statements into concrete financial statements.

**Keywords:** Greenwashing, ESG, BRSR Core, Securities Fraud, Unfair Trade Practices, Assurance Standards, SEBI.

## 1. INTRODUCTION

The integration of Environmental, Social, and Governance (hereinafter referred to as ESG) criteria into the global financial architecture has dramatically altered the landscape in which corporate disclosures are made. What was traditionally viewed as a voluntary exercise in corporate social responsibility (CSR), public relations, and corporate reputation management has quickly evolved into a mandatory, highly scrutinized, and legally binding regime in financial and non-financial reporting. As institutional capital markets, asset managers, and retail investors increasingly use sustainability criteria to price risk, cost of capital, and make investment decisions, the financial incentive for corporations to

exaggerate, misrepresent, manipulate, and fabricate environmental credentials has grown proportionately.<sup>1544</sup> The phenomenon of "greenwashing" has therefore evolved from a breach in marketing ethics to a complex and highly destructive vehicle for corporate crime, securities fraud, and regulatory sanction.<sup>1545</sup>

The Indian regulatory regime, led by the Securities Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA), has built an effective statutory regime that aims to convert ESG commitments from mere boardroom rhetoric to courtroom realities. With

<sup>1544</sup> Akshit Dwivedi & Tanisha Mitra, *ESG Fraud and Greenwashing in India: A Corporate-Crime Perspective*, CPLAN (Nov. 8, 2025), available at <https://cplan.in/esg-fraud-and-greenwashing-in-india-a-corporate-crime-perspective/> (last accessed 15<sup>th</sup> March 2026).  
<sup>1545</sup> Id.

the operationalization of the Business Responsibility and Sustainability Reporting (BRSR) Core, along with the Prohibition of Fraudulent and Unfair Trade Practices (PFUTP) Regulations, the Companies Act of 2013, and the vigilant oversight of the National Financial Reporting Authority (NFRA), greenwashing in India has been stringently regulated as a misrepresentation under securities law.<sup>1546</sup> Moreover, the imposition of third-party verification on ESG disclosures has created a massive burden of legal liability on assurance providers and statutory auditors to forensically investigate non-financial information with the same level of scrutiny as financial information.<sup>1547</sup>

This research work undertakes an exhaustive analysis of the architecture of corporate greenwashing claims in India. It also assesses the complex interplay between securities fraud, director liability, and statutory auditor responsibility under the BRSR Core, against the backdrop of evolving international enforcement trends, judicial precedents, and shareholder redress mechanisms.

## 2. **THE JURISPRUDENTIAL EVOLUTION OF CORPORATE DISCLOSURES AND ESG MATERIALITY**

To understand the gravity of concern that greenwashing poses, we have to understand the development of the concept of “materiality” in securities law. At the core of cases involving fraud and misrepresentation is the principle that a misrepresentation or omission has to be significant enough to alter the general impression that a prudent investor would want to make.<sup>1548</sup>

Materiality was traditionally concerned with hard financial data, such as revenue, liabilities, and profit margins. However, as we have come to appreciate the general risks of climate

change, supply chain disruptions, and governance failures, the concept of materiality has expanded to include sustainability information. Contemporarily because portfolio decisions, index inclusion, and risk-adjusted returns are so heavily influenced by ESG scores, the misrepresentation of a carbon footprint, diversity ratio, or waste management policy can influence asset prices. Therefore, the omission of material ESG information or the exaggeration of environmental information in filings is clearly within the scope of securities fraud.<sup>1549</sup>

In the Indian context, this is part of the transition from a shareholder-centric approach to a codified version of stakeholder capitalism. It is embodied in Section 166(2) of the Companies Act, 2013, which restates the role of directors.<sup>1550</sup> The section holds that directors must act in good faith for the purposes of the company, for the benefit of all its members, while also being required to have regard to the interests of the company and its employees, its members (shareholders), the community, and the environment.

This is a broad governance issue that Indian law now addresses with remarkable clarity. In a historic 2025 judgment on safeguarding the critically endangered Great Indian Bustard species, the Supreme Court reiterated a fundamental constitutional mandate: “Social responsibility of corporations cannot be separated from environmental responsibility”. CITE CASE The Court repudiated any argument suggesting that a corporation can be socially responsible while ignoring the environment. The Court held that allocating resources to protect the environment is not a charitable gesture but a constitutional mandate under Article 51A(g) and Section 135 of the Companies Act. In sum, this ruling shattered a cramped, shareholder-centric approach and leaves no doubt that

<sup>1546</sup> *Greenwashing Legal Risks for Companies*, Law Gratis (Jan. 15, 2026), available at <https://www.lawgratis.com/blog-detail/greenwashing-legal-risks-for-companies> (last accessed 15<sup>th</sup> March 2026).

<sup>1547</sup> Piyush Agrawal & Debdatta Mukhopadhyay, *The Rise of ESG Litigation in India*, Int'l Bar Ass'n, available at <https://www.ibanet.org/the-rise-of-ESG-litigation-in-India> (last accessed 15<sup>th</sup> March 2026).

<sup>1548</sup> *supra* note 1.

<sup>1549</sup> Anil Kovvali, *ESG Securities Fraud*, 73 Duke L.J. 4195 (2024), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4195&context=dlj> (last accessed 15<sup>th</sup> March 2026).

<sup>1550</sup> Companies Act, 2013, § 166(2), No. 18 of 2013 (India).

corporate directors must take steps to protect the environment.

In case of greenwashing, the orchestration of misleading promotion of an environmentally friendly product line is done to boost sales while concealing severe damage to the environment from the production process. This misrepresentation is a direct violation of fiduciary duty under Section 166(2).<sup>1551</sup> Indian judicial precedent has already held that a “marketing decision” defence will not protect corporate directors when environmental statements are substantially misleading, unverified, or driven by short-term gains at the expense of the environment and the community. Greenwashing creates “assurance gaps” that deceive shareholders and impede sound investment choices, which in turn violate their fundamental rights.<sup>1552</sup>

### **3. THE STATUTORY ARCHITECTURE OF SECURITIES FRAUD AND GREENWASHING IN INDIA**

There is no legal categorization of greenwashing claims into a single “Greenwashing Act” in India. Rather, greenwashing occupies the “regulatory crossroads.”<sup>1553</sup> A single misrepresentation of environmental information or a misleading sustainability statement can put a company on notice under securities laws, corporate laws, and consumer protection laws simultaneously, cumulating legal liability for both the company and its principal officers.

#### **3.1 The SEBI Act, 1992 and the Prohibition of Fraudulent and Unfair Trade Practices**

In essence, the Securities and Exchange Board of India Act, 1992, is the foremost legal basis that encompasses greenwashing a capital market offense. Section 11 of the SEBI Act gives SEBI a wide mandate to protect investors in securities and to develop, regulate, and control the

securities market.<sup>1554</sup> Notably, Section 11(1)(a) empowers the SEBI to prohibit fraudulent and unfair trade practices in securities markets and to prevent unfair methods of raising money, including through prospectuses and other instruments.<sup>1555</sup> This provision is now construed in a way to include misrepresentations of ESG information in offer documents, annual reports, or public announcements that influence investment decisions or asset valuations.

The specific legal grounds for the prosecution of greenwashing are provided in the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations).<sup>1556</sup> Greenwashing, under PFUTP, becomes a prosecutable fraudulent market practice from an advertising complaint. The regulations are as follows:

- a. Regulation 3 (Fraudulent Conduct): This applies when a listed company knowingly makes up ESG performance information to mislead the market. This includes intentional misstatements about greenhouse gas emission inventory information or about supply chain labor practices to avoid scrutiny for modern slavery, or falsifying information to qualify for an ESG index to attract institutional investment focused on ESG under false pretences.<sup>1557</sup>
- b. Regulations 4 and 5 (Unfair Trade Practices and Misrepresentation): These provisions apply to more subtle and sophisticated versions of greenwashing that do not involve explicit fabrication but involve deception by omission or misrepresentation.<sup>1558</sup> This involves making vague and unsubstantiated claims about sustainability or engaging

<sup>1551</sup> *Id.*

<sup>1552</sup> Rise & Evolution of ESG Compliance in Indian Corporate Governance, SCC OnLine (Dec. 9, 2025), available at <https://www.sconline.com/blog/post/2025/12/09/rise-evolution-esg-compliance-indian-corporate-governance/> (last accessed 15<sup>th</sup> March 2026).

<sup>1553</sup> *supra* note 5.

<sup>1554</sup> Securities and Exchange Board of India Act, 1992, § 11, No. 15, Acts of Parliament, 1992 (India).

<sup>1555</sup> *Id.*, at § 11(1)(a).

<sup>1556</sup> Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [Lat amended on December 05, 2025].

<sup>1557</sup> *Id.*, at Regulation 3

<sup>1558</sup> *Id.*, at Regulations 4 and 5.

in selective disclosure, often referred to as “cherry-picking,” where an entity highlights positive environmental information while downplaying or concealing significant negative information about environmental infractions or heavy fossil fuel dependence.<sup>1559</sup>

The ESG fraud provisions envisaged under the SEBI Act are designed to be punitive in nature and they ought to create deterrence. Under Section 15HA, any person participating in fraudulent or unfair trade practices, including the misrepresentation of ESG information, shall be liable to a penalty not less than five lakh rupees, but may extend to a maximum of twenty-five crore rupees, or three times the profits made from such practices, whichever is higher. SEBI also has sweeping powers of enforcement under Section 11(4) and 11B: it can compel the disgorgement of ill-gotten funds, confiscate assets, impose an immediate trading halt, and ban directors and key managerial personnel from the securities market for prolonged periods.<sup>1560</sup>

### 3.2 Judicial Precedents and Doctrinal Rationale relating to ESG Fraud

The Indian securities regime is founded on a short list of historic judicial precedents and recent enforcement actions that inform the regulation of complex corporate deception. Although a majority of these precedents are pre-existing and antedate the current ESG regime, the doctrinal foundations they establish continue to frame the governance of modern greenwashing and disclosure challenges.<sup>1561</sup>

#### 3.2.1 Circumstantial Evidence of Fraud

In the landmark judgement of *Ketan Parekh v. SEBI*, the Supreme Court of India held that market manipulation and fraud do not require direct, documentary evidence of intent

(scienter).<sup>1562</sup> Fraud can be established by circumstantial evidence like behavioural patterns and consistent market data.<sup>1563</sup> For ESG claims, this means that SEBI does not require a smoking gun email showing the board’s explicit intention to deceive investors; instead, a consistent pattern of touting “Net Zero” misinformation while increasing funding for and expanding the scope of high-emitting projects may be sufficient to establish fraudulent intent under the PFUTR Regulations.

#### 3.2.2 Strict Investor Protection and Disclosure Supremacy

The noteworthy ruling in *Sahara India Real Estate Corp. Ltd. v. SEBI* reaffirmed the critical importance of mandatory disclosure regimes to market integrity. Circumventing disclosure regimes, whether financial or non-financial, undermines investor trust and requires severe punitive measures.<sup>1564</sup> Violations of these disclosure regimes, including environmental misinformation, are violations of these essential disclosure requirements to ensure market discipline.<sup>1565</sup>

#### 3.2.3 Accountability of Deceptive Omissions

The SEBI’s tough stand in the DLF case makes it clear that the deception of omission is no less serious than the deception of direct lies. DLF and its promoters were prosecuted for deliberately suppressing material information in their Red Herring Prospectus, established that deception by omission is equally as actionable as direct, affirmative lie.<sup>1566</sup> Applying the same to ESG reporting: if a company boasts about small renewable energy increments in its sustainability report while deliberately suppressing information about a looming, gigantic environmental litigation battle involving its core manufacturing subsidiary, it is

<sup>1559</sup> *Id.*

<sup>1560</sup> Securities and Exchange Board of India Act, 1992, § 15HA, No. 15, Acts of Parliament, 1992 (India).

<sup>1561</sup> *supra* Note 1.

<sup>1562</sup> (2006) 65 SCL 210 SAT.

<sup>1563</sup> *Id.*

<sup>1564</sup> (2013) 1 SCC 1.

<sup>1565</sup> *Id.*

<sup>1566</sup> DLF Ltd. vs. Securities and Exchange Board of India, (2014) SCC OnLine SAT 564.

a deception of omission that is no less serious than a direct bluff under PFUTP regulations.

### **3.2.4 Misrepresentation in Financial Statements (Seacoast Shipping Services Ltd., 2025)**

In 2025, SEBI made it clear in a historic 187-page final order against Seacoast Shipping Services Ltd. and its promoters, permanently banning them from the securities market for five years and requiring them to disgorge over ₹48 crore. The order revealed that the company's financial statements were not truthful and were deliberately misrepresented, misleading investors about the company's true condition. This is a clear indication of SEBI's determination to punish boards that deliberately fail to put a true and fair view, which is exactly what is expected in audited ESG reports under the BRSR framework.<sup>1567</sup>

### **3.2.5 Strict Disclosure Adherence (Vishnu Prakash R Punglia Ltd, 2026)**

Again, in early 2026, the Vishnu Prakash R Punglia Ltd. was slapped with a monetary fine for violating disclosure regulations, making it clear that SEBI is ever-vigilant about corporate disclosures and demands reliable and trustworthy information in India's capital markets.<sup>1568</sup>

## **4. CORPORATE CRIMINAL LIABILITY AND FIDUCIARY LIABILITY UNDER THE COMPANIES ACT, 2013**

Operating parallelly to the capital markets, the Companies Act, 2013, further strengthens the net. It prescribes strict statutory punishment for corporate misrepresentation and holds the board members, officers, and statutory auditors personally liable.<sup>1569</sup> Greenwashing is no longer a violation; it borders on criminal activity when it transcends the threshold of fraud.

### **4.1 The Broad Scope and Applicability of Corporate Fraud (Section 447)**

Section 447 of the Companies Act expansively defines "fraud" as of a very broad ambit. It encompasses any act, omission, concealment, or misuse of position by anyone to deceive, obtain an improper advantage, or cause harm to the company, its shareholders, its creditors, or any other person.<sup>1570</sup> This is particularly fruitful in identifying greenwashing frauds, where the trickery may be clever but the intention of getting an unfair market advantage (such as a reduced rate on a sustainability-linked loan or a boosted stock price fuelled by ESG investments) becomes evident. CITE

The punishment provided for violation of Section 447 is draconian. If the ESG misrepresentation or fraudulent sustainability disclosure exceeds ten lakh rupees or 1% of the company's turnover (whichever is lower), it attracts mandatory criminal liability. The punishment includes a prison term of six months to ten years, along with a fine that is not less than the amount of the fraud but not more than three times that amount.<sup>1571</sup> If the fraud has any bearing on the public interest, as it is likely to have in cases involving environmental damage and market manipulation affecting the public at large, the minimum jail term is three years.

### **4.2 Penalties for False Statements and Evidence (Section 448)**

The liability for greenwashing also applies to the documents and reports that the company files. Section 448 provides punishment for making any false statement or intentionally omitting material facts in any return, report, certificate, financial statement, prospectus, or other document required to be filed. If the document contains a false statement in a material part (with the intention of being false) or omits a material fact (with the intention of it being

<sup>1567</sup> WTM/KV/CFID/CFID-CORD/31688/2025-26.

<sup>1568</sup> SEBI Adjudication Order No.: Order/SM/SM/2025-26/32149.2025-26/32149.

<sup>1569</sup> *supra* note 5.

<sup>1570</sup> Companies Act, 2013, § 447, No. 18, Acts of Parliament, 2013 (India).

<sup>1571</sup> *Id.*

material), then the guilty party will be liable to the severe punishment under Section 447.<sup>1572</sup>

As such, the board members, Chief Financial Officers (CFOs), Chief Sustainability Officers (CSOs), and other important managerial members who sign or certify the Business Responsibility and Sustainability Reports (BRSR) with misleading green information will be liable to immediate criminal charges under this section. The Indian law is very clear that the board members cannot plead ignorance of the contents of the reports they sign, making due diligence on ESG information a non-negotiable legal requirement.<sup>1573</sup>

**5. THE BRSR CORE FRAMEWORK AND THE 2025/2026 RECALIBRATION OF ‘EASE OF DOING BUSINESS’**

In an effort to address the problem of information gaps that arise from voluntary and non-standardized sustainability reporting, SEBI initiated a comprehensive reform of non-financial corporate disclosure. In May 2021, SEBI issued the Business Responsibility and Sustainability Reporting (BRSR) framework, which replaced the previous BRR.<sup>1574</sup> The BRSR framework required the top 1,000 listed companies by market capitalization to disclose highly detailed quantitative and qualitative ESG factors on the basis of nine principles that were derived from the National Guidelines on Responsible Business Conduct (NGRBC).<sup>1575</sup>

However, recognizing that even mandatory disclosure may be susceptible to greenwashing and exaggeration, SEBI further tightened the regime in July 2023 by issuing the BRSR Core Framework. The BRSR Core Framework is a more targeted version of the overall BRSR framework and includes particular KPIs and metrics that are subject to mandatory third-party verification.

**5.1 Key Performance Indicators (KPIs) and the Key Value Chain Requirement**

The BRSR Core Framework was intended to move the needle on corporate reporting from being a qualitative, story-driven narrative of corporate performance to a quantitative, results-driven set of metrics that can be compared year to year and externally audited.<sup>1576</sup> The framework mandates the company to disclose nine ESG factors, with certain requirements to carefully quantify and report on factors such as:

- i. Greenhouse gas (GHG) emissions, including calculations and measurements for Scope 1 (direct) and Scope 2 (energy indirect) emissions.<sup>1577</sup>
- ii. Water intensity, defined as total amount of water consumption divided by total turnover.<sup>1578</sup>
- iii. Waste management practices, including waste reduction, recycling, reusing hazardous waste treatment, and circular economy operations.<sup>1579</sup>
- iv. Social KPIs specific to the Indian ecosystem, including employment generation in smaller towns, business transparency, and gross wages paid to women.<sup>1580</sup>

To facilitate global comparability and avoid any potential suppression of inefficiencies through favourable exchange rates. So, intensity ratios must be adjusted for Purchasing Power Parity (PPP).

The most revolutionary and complex component of the BRSR Core itself is its extension from the boundaries of the firm itself into the supply chain. First, SEBI asked listed

<sup>1572</sup> Companies Act, 2013, § 448, No. 18, Acts of Parliament, 2013 (India).  
<sup>1573</sup> CS Divesh Goyal, *Precautions Need to be Taken by Professionals while Certifying Forms*, CS Divesh Goyal Blog (Aug. 11, 2023), available at <https://csdiveshgoyal.com/Blog/84/DIR3KYC.aspx>.  
<sup>1574</sup> BRSR ESG Reporting India Guide, Breathe ESG, available at <https://www.breatheseg.com/resources/brsr-esg-reporting-india>.  
<sup>1575</sup> *Id.*

<sup>1576</sup> BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain, SEBI Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 (July 12, 2023).  
<sup>1577</sup> *Id.*  
<sup>1578</sup> *Id.*  
<sup>1579</sup> *Id.*  
<sup>1580</sup> *Id.*

companies to disclose BRSR Core KPIs for their value chain, including the top upstream and downstream partners who collectively represented 75% of their purchases or sales (valued).<sup>1581</sup> This was the first time in history that large Indian firms were forced to audit the environmental performance of their suppliers, vendors, and distributors.<sup>1582</sup>

## 5.2 The 2024–2026 Recalibration: Striking a balance between Rigor and Practicality

The urge to adopt and incorporate the 2023 BRSR Core as quickly as possible, with its stringent requirements, created actual friction for Indian companies. Companies were faced with exorbitant compliance expenses, difficulties in accessing data from micro suppliers, and a general feeling that the system was not fully ready. In light of extensive industrial feedback and recommendations from the Expert Committee for Facilitating Ease of Doing Business, SEBI introduced major changes through various circulars issued between May 2024 and March 2025, influencing the regulatory landscape for the 2026 financial year.<sup>1583</sup>

First, SEBI relaxed the stringent value-chain rules to reduce the burden. Instead of requiring data from 75% of the cumulative value chain, the new system requires disclosures only from core value-chain partners who individually contribute 2% or more of the total purchases or sales of a listed entity. Additionally, the deadline for value-chain ESG disclosures was extended to the 2026 financial year.<sup>1584</sup> Until then, compliance with value-chain ESG is strictly voluntary, abandoning the “comply or explain” route that was followed before.

Secondly, for auditors’ legal risk, SEBI has introduced a change in the verification threshold. The 2023 regulation required

“reasonable assurance” for the top listed entities, a level similar to a comprehensive statutory financial audit, where the auditor is required to confirm the findings of testing internal controls, data gathering processes, and ESG disclosures themselves.<sup>1585</sup> However, SEBI realized that the use of the word “assurance” posed unintended legal risks and high costs. SEBI has made a change in the framework. Listed companies are now allowed to choose between “assessment” or “assurance” for their BRSR Core disclosures.<sup>1586</sup> This assessment will be informed by new standards to be developed by the Industry Standards Forum (ISF) in partnership with SEBI, making the process of verification more profession-agnostic and cost-effective, yet still facilitating independent validation.

Moreover, to promote verifiable environmental performance, SEBI introduced a voluntary leadership indicator in Principle 6 of the BRSR, the “Green Credit Program.” Companies are requested to disclose the precise number of green credits that have been created or purchased by themselves and their top ten value-chain partners.<sup>1587</sup>

## 6. ESG AUDITOR’S RESPONSIBILITY, PROFESSIONAL MISCONDUCT, AND NFRA OVERSIGHT

The trust in the entire BRSR Core framework, and its ability to prevent securities fraud depends on the skills, genuine independence, and liability of the ESG assurance providers. As non-financial ESG information gains equal material significance to conventional financial information, the professionals engaged in auditing this information are under intense

<sup>1581</sup> Inst. of Chartered Accts. of India [ICAI], *Background Material on Sustainability and Business Responsibility and Sustainability Reporting (BRSR)* 55-56 (Rev. Ed. 2024), available at <https://sustainability.icai.org/wp-content/uploads/2025/06/Background-Material-on-Sustainability-Business-Responsibility-Sustainability-Reporting-BRSR-Revised-Edition-2024.pdf>.

<sup>1582</sup> *Id.*

<sup>1583</sup> *India’s BRSR: Strengthening ESG Reporting*, Seneca ESG, available at <https://senecaesg.com/insights/indias-brsr-strengthening-esg-reporting-and-value-chain-accountability/>.

<sup>1584</sup> *Id.*

<sup>1585</sup> *First Notes: SEBI Framework on BRSR Core*, KPMG India (July 2023), available at <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2023/07/firstnotes-sebi-framework-on-brsr-core-value-chain-disclosures-assurance-by-listed-entities.pdf>

<sup>1586</sup> *7 Steps to Best Practice BRSR Core Compliance*, Achilles, <https://www.achilles.com/industry-insights/7-steps-to-best-practice-brsr-core-compliance/>.

<sup>1587</sup> *Measures to Facilitate Ease of Doing Business*, SEBI Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2025/42 (Mar. 28, 2025), [https://www.sebi.gov.in/legal/circulars/mar-2025/measures-to-facilitate-ease-of-doing-business-with-respect-to-framework-for-assurance-or-assessment-esg-disclosures-for-value-chain-and-introduction-of-voluntary-disclosure-on-green-credits\\_93102.html](https://www.sebi.gov.in/legal/circulars/mar-2025/measures-to-facilitate-ease-of-doing-business-with-respect-to-framework-for-assurance-or-assessment-esg-disclosures-for-value-chain-and-introduction-of-voluntary-disclosure-on-green-credits_93102.html).

regulatory observation and severe punishment for professional negligence and greenwashing.

### 6.1 Independence Criteria and the Application of Assurance Standards

To eliminate the conflicts of interest that have long undermined financial auditing, and could easily give rise to ESG greenwashing, the SEBI has prescribed extremely stringent independence criteria for BRSR Core assurance providers. These criteria are largely consistent with Section 144 of the Companies Act, 2013, which specifies the services a statutory auditor cannot undertake. An ESG assurance provider cannot provide non-audit services such as risk management, consulting, investment banking, internal auditing, management services, or project management to the listed entity.

SEBI has also made it clear that the existing statutory financial auditor of the company can be the BRSR Core assurance provider, provided they strictly comply with these restrictions. The corporate audit committee, under its fiduciary obligations, is specifically tasked with thoroughly verifying these independence requirements to ensure that there is no conflict of interest that can jeopardize the integrity of the ESG audit.

The assurance engagement is not something that is left to arbitrary execution; it is carried out in extremely specific, internationally accepted technical norms. The 2024 Technical Guide and Background Material issued by the Institute of Chartered Accountants of India (ICAI) specifies that the assurance provider must use the International Standard on Assurance Engagements (ISAE) 3000, or its Indian equivalent, the Standard on Sustainability Assurance Engagements (SSAE) 3000, for auditing general sustainability information.<sup>1588</sup>

For the highly technical and closely scrutinized process of quantifying carbon footprints, the auditor must use SSAE 3410 (Assurance Engagements on Greenhouse Gas Statements). Such highly technical norms mandate the

auditor to rigorously question the core assumptions made by company's management and thereupon strenuously test the boundary definitions used for Scope 3 emissions in the value chain, and also meticulously scrutinize the mathematical formulas used for computing complex variables such as PPP-adjusted intensity ratios. The assurance provider should also explicitly mention a specific assurance standard for conducting the audit in the final report that it has used.

### 6.2 The Prominent Role of NFRA and the 2026 TCWG Circular

The auditors who review material non-financial and financial information carry out their duties in the presence of the National Financial Reporting Authority (NFRA). Established to restore public trust following a spate of governance scandals, NFRA has powers conferred upon it through Section 132(4) of the Companies Act, 2013. NFRA has very extensive, quasi-judicial powers; so, it can function like a civil court, call for certain evidences, examine witnesses under oath, and impose stricter penalties. When an accused is found guilty, NFRA can impose fines of up to five times the fee and ten times the audit fee on individuals and audit firms, respectively, and it can also debar the auditor or audit firm for a period of up to ten years.<sup>1589</sup>

A remarkable milestone was achieved on January 7, 2026 with issuance of a by NFRA, which clarified the expectations regarding auditor conduct, particularly in preventing corporate fraud and greenwashing. The 2026 circular addresses a persistent issue i.e. the lack of adequate or inadequately documented communication between statutory auditors and those charged with governance (TCWG), including audit committees. The investigation conducted by NFRA revealed that auditors had

<sup>1588</sup> *supra* note 5.

<sup>1589</sup> *Effective Communication Between Statutory Auditors and Those Charged with Governance*, NFRA Circular (Jan. 7, 2026), available at <https://nfra.gov.in/nfra-circular-on-effective-communication-between-statutory-auditors-and-those-charged-with-governance-including-audit-committees/> (last accessed 15<sup>th</sup> March 2026).

not documented their two-way communication on key strategic risks, internal control weaknesses, and fraud vulnerabilities. The circular clearly stipulates that, under Standards of Auditing (SA 260 and SA 265), auditors are duty bound to issue their reports in a timely written manner on these risks and actively solicit feedback from the company's board.

In regard with the ESG auditing, the impact of this circular is very significant. If the ESG assurance provider finds that management is cherry-picking sustainability information or using questionable emissions data, then a failure to actively escalate, document, and discuss these critical matters and deficiencies with the Audit Committee can be considered professional misconduct.<sup>1590</sup>

It is noteworthy to mention here that as reported in February 2026, NFRA has reportedly paused new disciplinary actions pending a definitive ruling from the Supreme Court on procedural separation concerns raised by the Delhi High Court, seeking to ensure that all enforcement actions against auditors remain legally watertight from a legal standpoint.

## **7. ANTI-GREENWASHING NORMS: GREEN DEBT SECURITIES AND CONSUMER PROTECTION**

However, the BRSR Core provides for broad corporate disclosure, green finance and consumer protection necessitate more specific and targeted norms and regulatory interventions to prevent greenwashing.

### **7.1 SEBI's Mechanism for Green Debt Securities**

Green bonds and sustainability-associated debt have become quite popular as Indian businesses require transition financing to support renewable energy initiatives. Although, for deterring misuse in this rapidly expanding sector, SEBI issued a specific circular in February 2023, outlining specific Dos and Don'ts for issuers of Green Debt Securities.

According to those guidelines, SEBI has identified greenwashing in debt as the act of making "false, misleading, unsubstantiated, or incomplete claims about a product, service, or business operation's sustainability." To maintain market integrity, issuers are prohibited from using "misleading terminology," "concealing environmental trade-offs," or "selectively pointing to isolated research to highlight small green practices while overlooking larger, carbon-intensive operations."

Crucially, the guidelines obligate issuers to measure correctly and honestly the negative externalities associated with the funds raised in the green debt issue. The guidelines also prohibit any misleading statements that give the impression of independent third-party verification. Non-compliance with these guidelines may harm the debt instrument's market reputation and result in immediate and harsh penalties for the issuer, its management, and lead managers under SEBI PFUTP Regulations for market manipulation and securities fraud.<sup>1591</sup> For enhancement of authenticity, SEBI also needs to appoint an independent third-party reviewer or certifier for both pre-issuance and post-issuance stages.

### **7.2 The CCPA 2024 Guidelines regarding Environmental Claims**

Greenwashing is not only confined to investor materials, but it also permeates through consumer marketing. To address this dual challenge, the Central Consumer Protection Authority (CCPA), exercising its vested powers under the Consumer Protection Act, 2019, introduced the iconic Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 guidelines.

Section 2(47) of the Consumer Protection Act considers misleading representations regarding the quality of a product or its environmental attributes as an actionable unfair trade

<sup>1590</sup> *Bridging the Gap: NFRA's Circular for Enhancing Auditor-TCWG Communication*, KPMG India (Feb. 6, 2026).

<sup>1591</sup> Alekh Shah, *NFRA Pauses Disciplinary Orders Pending Supreme Court Ruling on Procedural Clarity*, Econ. Times CFO (Feb. 9, 2026), available at <https://cfo.economicstimes.indiatimes.com/news/tax-legal-accounting/nfra-pauses-disciplinary-orders-pending-supreme-court-ruling-on-procedural-clarity/128106940> (last accessed 15<sup>th</sup> March 2026).

practice.<sup>1592</sup> The 2024 CCPA guidelines are very stringent in nature as it provide that all environmental claims in marketing must be supported by authentic, scientifically sound, and updated information. They also ban the use of general, generic expressions such as “eco-friendly,” “100% natural,” or “carbon-neutral” without any strict contextual evidence and accessible underlying data.

The consequent enforcement mechanisms are severe. According to these norms, any violation can lead to strict fines as well as criminal charges. For first-time offenders, the fines can go up to ₹10 lakh, with the possibility of imprisonment for a maximum of two years. However, if the violation occurs again, the fines can go up to ₹50 lakh, with the possibility of imprisonment for a maximum of five years. Furthermore, advertising endorsers and brand ambassadors who advertise products on the basis of ‘green’ claims that are actually fabricated can be prohibited from any form of advertising endorsement for a period of up to three years. This is a tough, parallel liability regime where a company can be prosecuted by SEBI for misleading investors and CCPA for misleading consumers on the same ‘green’ advertising campaign.

## **8. SHAREHOLDER ACTIVISM AND CLASS ACTION LAWSUITS (SECTION 245)**

Given that greenwashing affects shareholders and institutional investors who make investments on the basis of misleading sustainability statements, there are developing statutory remedies in Indian law for collective shareholder actions.

Under Section 245 of the Companies Act, 2013 the Class Action Suits (CAS) can be initiated. This is a very effective provision that allows a certain number of members or depositors, like at least 100 members, or members holding 5% of the total members, or members holding 2% (in case of listed companies) or 5% (in case of unlisted companies) of the issued share capital,

to make a joint application to the National Company Law Tribunal (NCLT).<sup>1593</sup> The suit has to satisfy very stringent judicial tests of numerosity, commonality, typicality, and adequacy of representation, which have been borrowed from the U.S. class action jurisprudence.<sup>1594</sup>

Furthermore, Section 245 allows a shareholder class to claim damages, compensation, or an injunction to restrain an act that is beyond the powers of the company not only against the company and its board but also against “auditors, experts, advisors, and consultants.” The cause of action includes “any improper or misleading statement made in audit reports,” or any act that is fraudulent or wrongful.

Notably, Section 245 is a very effective provision that can be used for emerging climate-related litigation and ESG shareholder activism.<sup>1595</sup> If a SEBI-accredited ESG Rating Provider (ERP) or an assurance company gives a clean report based on bogus BRSR information, the shareholders can directly approach the court to sue these specific auditors and consultants for substantial financial damages.

Nevertheless, law and policy professionals still recommend more sophisticated changes in legislation that might increase the usefulness of this device. Among the recommendations would be a major cut in the standing requirement rules, which could permit groups of 10 to 20 persons to sue, and an extension of the who can sue list, so that non-shareholder stakeholders, like employees, workers down the value chain, or local people affected by the environmental follies of a company, could bring class actions against great governance malpractices.<sup>1596</sup>

<sup>1592</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of Parliament, 2019 (India).

<sup>1593</sup> *Class Action Suits under Section 245 of Companies Act, 2013*, Nishith Desai Assocs. (Aug. 22, 2024), <https://nishithdesai.com/default.aspx?id=15099> (last accessed 15<sup>th</sup> March 2026).

<sup>1594</sup> Companies Act, 2013, § 245, No. 18, Acts of Parliament, 2013 (India).

<sup>1595</sup> *Id.*

<sup>1596</sup> *Global ESG Trends and Local Realities: A Comparative Study of India and the European Union*, SSRN (Oct. 1, 2024), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5386715](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5386715) (last accessed 15<sup>th</sup> March 2026).

## 9. CONCLUSION

The age of unchecked and misrepresentational corporate sustainability is no longer with us. Through the assistance of the granular metrics of the BRSR Core, the teeth of the SEBI PFUTP Regulations, and the general fraud provisions of the Companies Act, 2013, ESG disclosures have moved out of the corporate narrative and into the field of strict liability domain of securities regulation and corporate governance.

The fact that the BRSR Core underwent significant transformation by moving towards ease of doing business indicates that a regulator is attempting to strike a balance between market integrity and practical practicality. Nevertheless, by making changes to the value chain thresholds and the adaptive evaluation systems, SEBI reflects the realization of the complexity of systemic global supply chain audits. So, the instances of enforcement against corporate misrepresentation initiated by SEBI in 2025 and 2026 reflect that regulatory flexibility does not give boards of companies a blank check to evade fraud claims.

For company directors, the duty of care mandated by Section 166(2) of the Companies Act, now reaffirmed as a constitutional duty by the Supreme Court, requires active, diligent, and meticulous monitoring of all environmental claims. The generic defense of “marketing exuberance” has no legal standing.

For ESG assurance firms, rating agencies, and statutory auditors, the risk environment has become more complex. Under NFRA’s tough watch, auditors are required to strictly apply technical standards and proactively identify internal control deficiencies as mandated by the 2026 NFRA framework.

Eventually, with globalization and sustainability of market operations in Indian capital markets, greenwashing will be a serious offense just like other money-related offenses like embezzlement and insider trading. The companies, their officers and their auditors must thus adapt to this new reality and they

must give the same attention to detail in environmental and social information as is afforded to the financial accounting. In an era where the market is highly regulated, a lie on matters touching on sustainability is a securities fraud.

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