
RECONCEPTUALIZING GREENWASHING AS AN INVESTOR HARM: A CRITICAL ANALYSIS OF SEBI'S REGULATORY GAP

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ABSTRACT

The recent rise in Environmental, Social, and Governance (ESG) investing has revolutionized financial markets, although it has also increased the risk of greenwashing, or false or overstated sustainability reporting by companies. This paper re-conceptualizes the notion of greenwashing as not only a problem of the environment, but a type of harm done to investors, a harm that vitiates market integrity and informed judgment. It critically analyzes the regulatory framework of the Securities and Exchange Board of India in terms of gaps in ESG disclosure norms, the lack of a clear definition of greenwashing, poorly implemented, and the lack of protective measures against investors. The study, by conducting a comparative study with the international frameworks, emphasizes the need to have standardized disclosures, third party verification, and more stringent liability provisions. This paper contends that it is imperative to undertake greenwashing in terms of the investor-centric approach to achieve transparency, safeguard the investors, and achieve sustainable finance in India.

Keywords: Greenwashing, ESG Investing, SEBI, Investor Protection, Sustainable Finance, Regulatory Gap

1. Introduction

Environmental, Social, and Governance (ESG) investing has undergone a great change in the global financial arena because of the high pace of its growth. Growing awareness on climate change, social responsibility and corporate accountability is pushing more investors in the world to focus on the question of sustainability in addition to financial returns¹. This has been more so in the developed markets but is gradually taking root in the emerging economies like India. Green bonds, Sustainability-linked financial instruments, and ESG-oriented funds are now part and parcel of the current investment portfolio, and a larger move towards responsible capitalism.

ESG investing has been on the rise in India over recent years, which has been aided by regulatory efforts, as well as rising investor awareness. The ESG disclosures are now being taken into account by institutional investors, mutual funds and even retail investors when making investment decisions. Nonetheless, it is also with this growth that a critical challenge has emerged- greenwashing. Greenwashing is the act of exaggerating, misrepresenting, or falsely stating the environmental or sustainability credentials of the company to seem more responsible than it is in actuality². These actions undermine the transparency of ESG investing and market distortions.

The conventional definition of greenwashing has been seen more as an environmental problem, which focuses on the negative impact that it has on the ecological systems and sustainability objectives. But this view is growingly becoming reassessed. Greenwashing should also be perceived as a type of investor harm. False ESG reporting generates a lack of information between investors and companies that results in improper investment choices. Investors basing their investments on false sustainability statements can invest capital inefficiently and the investments will lead to financial losses and the loss of trust in the market.

As a major regulator of the Indian securities market, the Securities and Exchange Board of India (SEBI) is very instrumental in promoting transparency, fairness, and protection of investors. SEBI has over the years enacted a number of measures to control ESG disclosures such as the Business Responsibility and Sustainability Reporting (BRSR) framework and ESG

¹ Dimri S, Srivastava A. Navigating the Legal Landscape of Green Finance and Responsible Investment in India: A Critical Analysis. *Fintech for ESG and the Circular Economy*. 2025 Jan 20:93-118.

² Mukherjee S. Regulating ESG Disclosures in India: Greenwashing and Legal Accountability. *IJLRP-International Journal of Leading Research Publication*.;6(12).

mutual funds guidelines. Although these efforts are being done, the regulatory framework has not achieved enough to tackle the intricacies of greenwashing³.

The fundamental research question that will be utilized in the current paper is the insufficient legal acknowledgment of greenwashing as a type of investor fraud in the Indian regulatory framework. Although SEBI has been improving on the issue of ESG disclosures, it has not clearly spelt out and penalized greenwashing in a way that will safeguard investors against deceptive claims.

This study has threefold objectives. To begin with, it will examine the ESG disclosure framework of SEBI and how effective it is in terms of transparency. Second, it aims to analyze the threat that greenwashing practice has on investors. Third, it will seek to establish regulatory loopholes and recommend steps to enhance investor protection.

The following research questions are used in the study:

- How well does the regulatory framework of SEBI deal with greenwashing?
- What is the effect of greenwashing on investors in the Indian securities market?
- What are the regulatory changes that should be implemented to reduce greenwashing as investor harm?

This research paper only covers the Indian regulatory system and mostly the SEBI regulations and other laws that are related to the same. It is doctrinal in nature, basing itself on statutory analysis, regulatory reports and scholarly literature. Nevertheless, the research lacks empirical data analysis, which can restrict its possibilities to measure the level of harm to the investors.

2. Conceptual Framework

2.1 Meaning of Greenwashing

Greenwashing is a process of creating the wrong or inaccurate impression on the environmental activities of a company or the sustainability value of its products or services. It entails the manipulation of information in a strategic manner to give an illusion of environmental

³ C., Haran. "Political economy of green finance: analysing its effect on the development of legal framework. *Indian J. Integrated Rsch. L.* 2023;3:1.

responsibility without acting in any concrete manner.

There are various forms of greenwashing. A typical form is selective disclosure, whereby companies emphasize on positive environmental initiatives and cover bad impacts⁴. The other type is the application of “unclear or vague statements, including the claim that products are eco-friendly or sustainable without any evidence. Greenwashing also includes false certifications and misleading labels, in which firms develop or abuse certifications to give a false indication of adhering to environmental standards.

The practices do not only mislead the consumers, but also distort the information available to the investors hence impacting on financial decision-making.

2.2 ESG Investing and Market Dynamics

ESG investing has become a trend in financial markets of the world. Non-financial considerations are becoming more and more a part of the decision-making process of investors as they realize that environmental and social risks have the potential to significantly affect long-term financial performance. In recent years, there has been an exponential growth in ESG funds, sustainability-linked bonds, and green financing instruments.

Within this changing environment, investors are putting a lot of faith in the corporate disclosures that pertain to ESG performance⁵. The disclosures are a very important source of information, as they can help investors evaluate the sustainability and ethical behavior of firms. Nevertheless, such disclosures tend to be not very reliable as there are no universal reporting schemes and mechanisms of independent verification.

The reliance on non-financial disclosures poses a weakness in the market. When the information presented is false or misleading, it may result in capital misallocation and inefficiency in the market.

2.3 Greenwashing as Investor Harm

Greenwashing is not only to be seen as an ethical or environmental problem but also as a great

⁴ Karishma A, Seema P, Anjali R, Dipalee A, Rikita T, Dhaval K. THE GREEN MIRAGE: A CONCEPTUAL REVIEW OF GREEN WASHING IN THE INDIAN CONTEXT. *Management*. 2025;13(1):121-33.

⁵ Kumari P. ESG Mandates and Corporate Governance: An Analysis. *Advances in Consumer Research*. 2025 Mar 1;2(2).

danger to the protection of investors. Greenwashing essentially puts information asymmetry, where companies have better information on what they actually do and investors are dependent on incomplete or misleading information.

This imbalance causes investors to make false decisions⁶. To give an example, an investor might decide to invest in a company on the assumption that it has good ESG practices and then later learn that the assertions made are false or baseless. This may cause a loss of money especially in cases where the market has to retract its steps after the unveiling of deceptive practices.

Additionally, greenwashing falsifies market forces by channeling investment to those companies that do not really promote sustainability. This does not only harm the larger responsible firms but also makes the entire concept of ESG investing questionable. Greenwashing, therefore, undermines investor confidence and puts financial markets stability at risk in the long term.

3. Literature Review

Greenwashing has been a subject of extensive scholarly research across the world, specifically in the arena of corporate sustainability and environmental ethics. Researchers have pointed out the role of greenwashing as a strategic instrument in the hands of companies to improve their reputations and draw in environmentally conscious investors⁷. Research has also focused on the impact of weak regulatory frameworks in facilitating such practices.

Studies on ESG-disclosures have also found that some of the issues related to ESG-disclosures are the use of disparate reporting measures, data-quality, and the limitation of having a robust verification process. These problems open up the opportunities to manipulate information and practice greenwashing by companies.

In the sense of investor protection, the extant literature is based on the theory of information asymmetry and market efficiency. In these theories, it is indicated that the proper operation of financial markets requires accurate and transparent information⁸. In cases where disclosures

⁶ Gossain R. Legal underpinnings drive ESG amidst global flux. *Paradigm*. 2023 Jun;27(1):27-46.

⁷ ANDREW PR, MEGHNA D, ABHIJITH M. ENVIRONMENTAL, SOCIAL, AND GOVERNANCE INTEGRATION IN INDIAN COMPANY LAW: THE EVOLUTION FROM DISCLOSURE TO SUBSTANTIVE CORPORATE ACCOUNTABILITY.

⁸ Hajare MB, Aher RB. *Sustainable Finance and Green Banking*. Book Saga Publications; 2025 Nov 3.

are misleading, the efficiency of the market is affected, causing an inefficient decision-making process in terms of investment.

Nonetheless, there is limited Indian literature about greenwashing. The majority of the literature deals with the corporate social responsibility and sustainability reporting without much attention to the aspect of investor protection. The gap in the analysis of greenwashing as a type of securities fraud in the Indian regulatory framework is evident.

Additionally, the current methods are inclined to be environment-related in nature, focusing on the environmental damage, instead of the economic consequences. Although this view is significant, it does not reflect the greater implications of greenwashing on investors and market integrity. By taking an investor-centric approach, this paper aims to fill this gap by redefining greenwashing as a type of investor harm.

4. Legal and Regulatory Framework in India

4.1 SEBI's ESG Framework

SEBI has made great strides to promote ESG disclosures and increase transparency in the Indian securities market. It has made the Business Responsibility and Sustainability Reporting (BRSR) framework one of its key initiatives⁹. The BRSR mandates that listed companies report about their environmental, social, and governance practices in a standard form.

Besides BRSR, SEBI has also put in place regulations on ESG mutual funds where investors must have investment strategies that are in line with the ESG objectives being articulated by the asset management companies. Such regulations prevent deceptive assertions and boost investor trust.

SEBI has also provided guidance on the disclosure norms, the importance of accurate and full reporting. Nevertheless, these actions are mainly aimed at enhancing transparency as opposed to dealing with the case of greenwashing itself.

⁹ Vashishta MS, Weber L. Comparative Analysis of Cross-Border Merger Regulations: ESG Integration and Corporate Governance Convergence in the EU and India. *International and Comparative Corporate Law Journal*. 2025 Apr 30;17(1):19-47.

4.2 Other Relevant Laws

Other than SEBI regulations, there are other laws that apply to ESG disclosures and greenwashing. The Companies Act, 2013 requires some disclosures in regard to corporate social responsibility hence creating accountability¹⁰. The Consumer Protection Act, 2019 deals with misleading advertising and unfair trade practices, and this may indirectly include greenwashing.

Moreover, Indian securities laws contain the provisions on prevention of fraud and misrepresentations. These provisions are however general and do not directly deal with ESG related misstatements. Consequently, they are not very effective in addressing greenwashing.

5. Critical Analysis of SEBI's Regulatory Gap

An insightful review of the regulatory framework of the Securities and Exchange Board of India shows that there is a lot to be desired in tackling the increasing menace of greenwashing in the context of the changing ESG investment environment in India¹¹. Although SEBI has done laudable work with regard to providing sustainability related disclosures, its existing framework is still weak in its ability to identify, regulate and punish false ESG claims. These loopholes not only destroy the efficiency of the regulation but also subject investors to high levels of financial and informational risks.

5.1. Lack of Absolute definition of Greenwashing.

A lack of a clear and legally established definition of greenwashing is one of the most basic constraints of SEBI regulatory regime. In the absence of an accurate statutory definition, it becomes intrinsically hard to have regulators differentiate between actual sustainability actions and fraudulent activities. Such ambiguity poses interpretational problems and undermines enforcement mechanisms. Lack of clarity can be used by companies as a way of making selective or exaggerated ESG claims without technically breaking any particular provision¹².

¹⁰ Park SK. Investors as regulators: green bonds and the governance challenges of the sustainable finance revolution. *Stan. J. Int'l L.*. 2018;54:1.

¹¹ Aik NC. Rethinking Corporate Priorities: The Surge of ESG Investing and Greenwashing Risks. *Fokus Ekonomi: Jurnal Ilmiah Ekonomi*. 2024 Jun 6;19(1):1-9.

¹² Rizzello A. Beyond greenwashing: An overview of possible remedies. *Green investing: Changing paradigms and future directions*. 2022 Aug 25:107-32.

This has made it hard to hold the regulatory authorities accountable and misleading business practices tend to pass unpunished thereby undermining the credibility of ESG disclosures.

5.2 Weak Disclosure Standards

Despite the fact that SEBI has introduced Business Responsibility and Sustainability Reporting (BRSR) framework as a step to enhance the level of transparency, the disclosure standards are not robust enough. One of the main problems is that companies have flexibility in reporting ESG data, which in most cases leads to non-comparable and inconsistent disclosures. Lack of standardized measures and indicators also makes it more difficult to compare ESG performance between companies. Also, there are no obligatory independent verification mechanisms, which could be a reason to question the authenticity of the information revealed. This leaves investors with no choice, but to make use of self-reported information that might not necessarily be the real sustainability practices that a company is involved in.

5.3 Lack of Liability Framework.

The other significant regulatory gap is the absence of a specific liability framework that is about greenwashing. Although the current securities laws extend to cover aspects of fraud and misrepresentation, they are not specially designed to address ESG-based disclosures¹³. This forms a legal grey field wherein deceitful sustainability assertions are not always liable to direct fines, except in the case that they could be established as conventional financial fraud. The lack of specific legal provisions weaken the deterrent effect and give businesses a low risk of legal penalty due to greenwashing. Such regulatory loophole greatly undermines the protection of investors.

5.4 Enforcement Challenges

Enforcement is a challenge, even in jurisdictions that have regulatory provisions. ESG disclosures are difficult to monitor and demand specific expertise, technical knowledge and a large institutional capacity that is not always in sufficient supply. The qualitative and dynamic nature of ESG data makes regulation even more difficult¹⁴. In addition, the lack of third-party

¹³ Jacobs BL, Finney B. Defining sustainable business—Beyond greenwashing. *Virginia Environmental Law Journal*. 2019 Jan 1;37(2):89-131.

¹⁴ Schneider-Maunoury G. Is Greenwashing a Definition or only a Hinderance of Sustainable Finance?. Available at SSRN 4507184. 2023 Jul 12.

audits or assurance systems is a limiting factor to the options of regulators to check the disclosure accuracy. Subsequently, enforcement efforts tend to be reactive instead of proactive, which enables misleading practices to continue being unnoticed over a long period of time.

5.5 Investor Protection Deficiency

The overall impact of all these regulatory gaps is a huge deficiency in investor protection. Retail investors are especially vulnerable because they rely on publicly disclosed information, especially as they become more and more involved in ESG-oriented investments. False ESG statements may lead to bad investment choices¹⁵, losses of money, and loss of confidence in the market. Moreover, the lack of specific grievance redressal systems related to ESG matters limits the possibility of remedies on the part of investors. In this respect, the current framework designed by SEBI is not aligned to its very purpose, which is to protect the interests of investors, therefore, there is an immediate necessity to have a more complex and investor-oriented approach to regulations.

6. Comparative Analysis

Comparative analysis of the international regulatory frameworks shows that the jurisdictions like the European Union and the United States have been more organized and proactive towards dealing with greenwashing in financial markets. The Sustainable Finance Disclosure Regulation (SFDR) of the European Union is one of the most extensive efforts to standardize the disclosures related to ESG. The SFDR requires participants in the financial markets to categorise investment products according to their sustainability goals and to make disclosures that are detailed, consistent, and comparable. It also creates responsibilities in the disclosure of sustainability risks and negative effects thus limiting the area of misleading statements¹⁶. Notably, SFDR focuses on transparency and accountability, as it involves regular reporting and the importance of correspondence with the EU taxonomy on sustainable activities.

In the United States, the U.S. Securities and Exchange Commission has suggested more effective ESG disclosure regulations to enhance the reliability and comparability of information on sustainability. Among these plans is standardized disclosures related to climate,

¹⁵ Clements R. Why comparability is a greater problem than greenwashing in ESG ETFs. *Wm. & Mary Bus. L. Rev.* 2021;13:441.

¹⁶ O'Neill K. Green everywhere? Institutional greenwashing and injustice in the green economy". In *Research handbook on the green economy 2024* May 21 (pp. 258-278). Edward Elgar Publishing.

risk assessment, and the tightening of the labeling of ESG funds. Enforcement activities of misleading ESG claims have also risen by the SEC, an indication of a shift in seeing greenwashing as a type of securities misrepresentation.

Conversely, the regulation structure of the Securities and Exchange Board of India is still quite young and less strict. Although SEBI has implemented measures like the Business Responsibility and Sustainability Reporting (BRSR) framework, it is not as in-depth and enforceable as its international counterparts.

This comparative analysis provides key lessons to India¹⁷. To begin with, ESG disclosures should be more standardized to make them consistent and comparable between companies. Second, they should incorporate mandatory third-party audits or assurance mechanisms in order to improve the credibility of the reported data. Third, the introduction of a strict liability framework of misleading ESG claims would serve as a very powerful deterrent to greenwashing. These steps will go a long way in enhancing the regulatory framework as well as in harmonizing it with the best practices worldwide.

7. Reconceptualizing Greenwashing as Investor Harm

Traditionally, greenwashing has been studied through the prism of environmental ethics, considering its negative effects on sustainability and ecological integrity. But such a view is becoming more and more insufficient to define the wider implications of such practices in financial markets. The necessity to redefine greenwashing as a new kind of investor abuse, akin to securities fraud, is strong as the practice directly affects investment choices and market integrity.

Theoretically, this change can be attributed to the information asymmetry theory. Companies in financial markets have better information on their operations and sustainability practices and investors use disclosed information to make decisions¹⁸. Misleading or incomplete such disclosures leads to an imbalance of information, which allows companies to take advantage of the investors. In this sense, greenwashing is a process whereby companies distort the image

¹⁷ Jones E. Rethinking greenwashing: Corporate discourse, unethical practice, and the unmet potential of ethical consumerism. *Sociological Perspectives*. 2019 Oct;62(5):728-54.

¹⁸ Begemann A. *Growing Green or Greenwashing Growth? Sustainable Finance and Forests* (Doctoral dissertation, Wageningen University and Research).

and sway the capital formation.

Also, the market efficiency theory highlights the need to have accurate and clear information in optimization of resource allocation. Efficient markets require the presence of sound information, which enables investors to make sound decisions. Greenwashing interferes with this procedure by presenting untrue or exaggerated ESG statements, causing mispricing of securities and ineffective capital allocation.

The effects of this distortion are enormous. Capital can also be channeled to businesses that only seem to be sustainable and not those that actually follow the ESG principles¹⁹. This not only benefits irresponsible companies but also weakens the integrity of ESG investing, in general. Moreover, when greenwashing is repeated, the investor trust is destroyed, and this is the key to the operations of the financial markets.

Thus, by redefining greenwashing as harm to investors, it is possible to get a better idea of all the implications of this practice and the need to introduce more stringent regulation". It changes the ethical aspect of it to legal responsibility where there is the need to consider misleading ESG disclosures as a gross infringement of the investor rights.

8. Recommendations

In order to mitigate the regulatory loopholes, SEBI needs to be more robust and investor-focused. It ought to bring a legal definition of greenwashing to clear confusion and create a viable enforcement mechanism. Mandatory disclosures on ESG with standardized metrics are to be introduced to guarantee comparability and disclosure. Mandatory 3rd party verification and regulation of ESG rating agencies would help in increase the credibility of the data. Moreover, certain penal regulations need to be laid down to discourage misrepresentation. Lastly, awareness of investors and special grievance redressal systems ought to be established to safeguard investors and boost market confidence.

9. Conclusion

This paper has emphasized that greenwashing is not a mere environmental issue, but a big way of harming investors that compromises the integrity of the market. The current regulatory

¹⁹ Schneider-Maunoury G. Is Greenwashing a Definition or only a Hinderance of Sustainable Finance?. Available at SSRN 4507184. 2023 Jul 12.

framework of SEBI, although progressive, is not effective in this area. It is high time to embrace tougher disclosure standards, hold managers and executives accountable, and make them consistent with international best practices. A regulation that is investor-focused will not only increase transparency but also help build confidence in ESG investing. Future studies can be conducted on empirical evaluation of the financial effect of greenwashing and the efficiency of the regulatory action in the new markets.