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NAVIGATING THE GREENWASHING FRONTIER: A CRITICAL ANALYSIS OF DIRECTOR'S LIABILITY IN CORPORATE GOVERNANCE

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ABSTRACT

Environmental, social, and governance considerations have revolutionized corporate governance by broadening the corporate responsibility regime from financial accountability to much wider criteria. Unfortunately, an unintended consequence of the new governance regime is greenwashing, which refers to the practice adopted by companies to deceive stakeholders about their environmental practices. This research paper critically discusses the issue of greenwashing in the context of corporate governance and focuses specifically on the responsibility of the corporation's directors for false and misleading ESG disclosures.

This research follows a doctrinal and comparative approach to analysing the laws and regulations concerning the duties and liabilities of directors in relation to ESG disclosures. In particular, the paper examines the extent to which the traditional legal principles of misrepresentation, fraud, and fiduciary duty can be used in relation to misleading ESG communications. The research will identify the main problems related to greenwashing and consider whether current regulatory approaches are adequate in mitigating those issues.

Finally, this work will make a comparative assessment of the regulatory regimes in the UK and the US. This will help us gain insight into best practices and innovative regulatory policies aimed at curbing greenwashing. The research paper highlights the limitations of the current approaches to greenwashing and suggests improvements that may help overcome regulatory weaknesses.

Based on the findings of the present research, greenwashing may be seen as a problem of corporate governance and a potential breach of the directors' fiduciary duty. There should be a better legal understanding of the term greenwashing to address the associated issues effectively.

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Moreover, directors should be made accountable for misleading ESG disclosures. Mandatory third-party verification of ESG reports is needed to tackle greenwashing effectively.

Keywords: Greenwashing; Corporate Governance; Directors' Liability; ESG Disclosures; Fiduciary Duties; Sustainability Reporting

CHAPTER 1 INTRODUCTION

1.1 Background and Context

The last ten years have brought about a major change in how companies evaluate their performance because they now assess environmental social and governance ESG factors in addition to traditional financial measurements. The shift has occurred because climate change awareness has increased while regulatory bodies have intensified their monitoring efforts and socially responsible investment practices have gained more traction. Today's companies must function as sustainable business operations while they maintain their primary goal of generating profits. The sustainability disclosures and ESG reporting processes now serve as essential components of corporate communication and governance practices.²

With time, however, the increasing trend towards more eco-conscious approaches has seen an increasing number of corporations adopting more proactive attitudes toward achieving sustainability goals. Nevertheless, despite the willingness of certain companies to make sure that they operate sustainably and take all necessary steps in this direction, some firms adopt greenwashing strategies. As such, the issue of greenwashing has become extremely topical nowadays and poses serious problems related to corporate governance.

Another aspect that has brought increased attention to the topic relates to the fact that ESG (environmental, social, and corporate governance) investment approaches have recently gained popularity among investors around the globe. In turn, there has been growing interest from companies to provide reliable and trustworthy information concerning these issues. Nevertheless, the lack of standards in relation to ESG data verification has made it possible to create a situation when companies provide fake or false information.

In India, the recent trends have seen more and more firms trying to incorporate ESG-related

² Jill E. Fisch, *Making Sustainability Disclosure Sustainable*, 107 Geo. L.J. 923 (2019)

issues within their governance practices. The introduction of the mandatory Business Responsibility and Sustainability Reporting (BRSR) framework by the Indian government requires a range of listed firms to make relevant disclosures. Despite being considered one of the achievements in the area, the practice also highlights the problems related to greenwashing and the need for more rigorous verification practices.

In turn, corporate governance refers to the system that involves all the relevant rules, practices, and procedures used to oversee company operations. Such a process seeks to ensure that companies operate properly and meet all the requirements of law and other parties involved. Corporate governance also focuses on the achievement of the required level of balance between different interests. Furthermore, directors are key actors within this framework.

Overall, the issue of greenwashing can be viewed against the backdrop of changes in the area of corporate governance. The problem lies in the fact that the process of achieving higher levels of transparency in ESG-related areas is complicated, which means that new legal practices should be developed and implemented. At the same time, the roles of directors should also be redefined.

1.2 Research Problem

The corporate world establishes a substantial gap between their public sustainability statements and the actual sustainability activities which they perform. Companies practice greenwashing when they create false claims about their environmental protection efforts. The problem shows itself through corporate misrepresentation which reveals fundamental problems with both corporate governance practices and regulatory enforcement mechanisms.

The main issue arises from the absence of a precise legal definition which describes greenwashing practices. Most jurisdictions throughout the world including India handle greenwashing through existing laws which address misrepresentation and fraud and unfair trade practices. The enforcement methods become less effective because the existing system creates unclear regulations which produce multiple enforcement challenges. Companies take advantage of disclosure loopholes by creating presentations which prevent legal review but still produce positive results.³

³ Consumer Protection Act, No. 35 of 2019

Another crucial concern revolves around the dynamic character of ESG disclosures. While there exist accounting standards that determine what should be reported in the financial statements, such standards have not been developed in connection with non-financial information. Therefore, when disclosing their sustainability data, companies use their own criteria, which creates problems with the assessment of the provided disclosures. Thus, directors responsible for monitoring such disclosures have trouble guaranteeing their reliability and completeness.

The problem of ineffective oversight in the domain under consideration is exacerbated by the fact that the regulators might not be able to ensure that disclosures are accurate. On the one hand, such issues require vast amounts of resources for verification. On the other hand, they are associated with a large amount of complex environmental data whose interpretation requires a special expertise. As a result, most greenwashing cases can go unnoticed.

From a governance point of view, the above-discussed problem prompts some questions. Namely, the problem raises doubts concerning the efficiency of director oversight of ESG-related activities. Directors are supposed to provide for the performance of their duties according to the best of their ability. However, the specifics of ESG disclosures make it rather problematic for directors to monitor environmental information adequately.

Therefore, the research problem relates to the inefficiency of current legal instruments and governance procedures used to prevent the problem under discussion. More specifically, the research will address whether the discussed instruments are adequate and if directors' involvement in the process is necessary.

1.3 Research Objectives and Questions

Firstly, this paper will aim at analyzing the concept of greenwashing in the context of corporate governance, particularly director liabilities and duties. In this regard, this study is intended to help fill the research gap that exists concerning this issue by investigating the regulatory and legal aspects of greenwashing.

The objectives of this paper include understanding the notion of greenwashing and how it works, which will entail examining different greenwashing techniques and their effects on stakeholders. Another significant objective is an analysis of the duties and obligations of

directors in the area of ESG disclosures in relation to whether legal principles provide enough guidance regarding the matter.

This study will further evaluate the efficacy of current regulatory measures as far as greenwashing is concerned. That is, it will investigate statutory laws as well as regulatory guidance on the subject, along with any shortcomings that may exist. Comparative analysis of other regulatory frameworks in relation to the topic under investigation will also be included.

There are certain questions to which this study seeks answers. They include: what is greenwashing in terms of corporate governance, to what degree can directors be held responsible for greenwashing, are there any inadequacies in legal frameworks governing the subject matter and finally what measures can be implemented to remedy this situation?

1.4 Research Methodology

This study uses the doctrine research methodology, which involves the critical analysis of legislation, statutory laws, and legal judgements. The study will make use of both primary and secondary sources, with the former consisting of laws and regulations while the latter will comprise articles, reports, and journals.

Comparative methodology will also be adopted in this study so that the regulatory frameworks in other countries can be compared. Such an analysis will help in highlighting the best practices in tackling greenwashing in other jurisdictions.

Critical evaluation and analysis of various pieces of academic literature is a core part of this research. The research is mainly focused on qualitative data analysis, although empirical data may also be considered at appropriate times during the process.

1.5 Significance of the Study

There is no doubt regarding the significance of this study. First, it is important to note that there are many areas of business and governance which remain underexplored until today, especially considering the growing importance of ESG factors. Greenwashing is one such topic, making it extremely important to conduct further research in the area.

It is hoped that the present research will add value to the existing body of knowledge by

conducting a critical review of the phenomenon and highlighting the issues faced by corporations and regulatory authorities.

CHAPTER 2

CONCEPTUALISING GREENWASHING IN CORPORATE GOVERNANCE

2.1 Meaning and Evolution of Greenwashing

The term greenwashing describes the practice of creating false environmental benefits through marketing which misrepresents the actual environmental value of a product or service or corporate operations. The term lacks an established legal definition because it describes deceptive activities which take advantage of the increasing consumer interest in sustainable products and services.⁴

The definition of greenwashing has developed through multiple stages because corporate behavior and environmental standards have changed over time. Greenwashing began as a marketing term but now includes corporate disclosures and sustainability reports and investment products. The development shows how businesses now treat environmental matters as essential to their governance and how environmental issues lead to risks of false reporting.

The rise of ESG investing has played a crucial role in this evolution. Companies face stronger pressure to appear environmentally responsible because investors now want their portfolios to match sustainability targets. The number of sustainability disclosures has grown because organizations now share more information, yet this expansion creates new chances for greenwashing.

2.2 Forms and Techniques of Greenwashing

Greenwashing is demonstrated by a variety of methods – from making vague claims and generalizations to complete lying about some company's green activities. For example, using the term "eco-friendly" without specifying what this means or giving any evidence of environmentally friendly practice is one of them. While being a good marketing trick, it creates an illusion of greenness but does not provide any real value.

⁴ TerraChoice Env't Mktg., Inc., *The Seven Sins of Greenwashing* (2007)

Another form of greenwashing includes the process of selective disclosure, when a company talks only about the positive aspects of its environmental work while remaining silent on the negatives. It is another way of creating the image of sustainability which often misleads stakeholders who rely on such reports.

Moreover, there are different techniques used within the process of misrepresenting company's sustainability efforts. One of them is using confusing language and metrics that are not easily interpreted by stakeholders.

2.3 Greenwashing as a Governance Issue

In addition to the fact that greenwashing is a purely marketing trick, it is a governance problem as well. Indeed, greenwashing represents the lack of proper corporate governance on several levels and can result from the failure in fulfilling key duties.

The role of directors in overseeing corporate activities, ensuring transparency and accountability of processes and practices is quite important in this regard. Their involvement and efforts can help in overcoming greenwashing.

CHAPTER 3

DIRECTORS' DUTIES AND ESG DISCLOSURES

3.1 Introduction

However, the development of corporate governance in the twenty-first century has dramatically changed the duties and responsibilities of board members. Traditionally, they focused on maximizing the profits of their shareholders. Today, they should also be responsible for overseeing ESG issues. Therefore, ESG reports became an important part of corporate financial reports. Directors are responsible not only for the company's financial performance and investments in sustainable activities but also for ensuring the validity of their ESG reports.

This chapter analyzes the duties of board members regarding ESG reports. First, it discusses the duties of directors from the perspective of the corporate governance structure and its legal aspects. Next, it provides information about the ESG disclosure requirements and the challenges that board members face during the process of preparing such reports.

3.2 Fiduciary Duties and ESG Responsibilities

The first aspect of the duties of board members is based on the concept of fiduciary duty. They are expected to act honestly and loyally in the best interest of the company. Traditionally, it meant that their main objective was to maximize the profits of their shareholders. However, the inclusion of ESG issues in the corporate governance strategy means that their main responsibility is not limited to their owners only.⁵

As for the duty of good faith, one should say that it obligates the board to act honestly and diligently, putting company's long-term interests above all else. As for the case of ESG disclosures, such directors should also act with integrity when disclosing environmental data, not overstating the company's accomplishments in this regard, thus making sure that the company does not become exposed to unnecessary legal risks or reputational damage.

Duty of care and diligence is another essential duty which obligates the board members to exercise proper judgment and remain diligent in relation to their fiduciary obligations. The changing situation on the market makes it essential for the board to understand the current state of affairs in terms of environmental risks, sustainability practices, and regulatory requirements. Thus, this duty becomes especially relevant under these conditions.

It goes without saying that directors' duty of loyalty can be considered extremely important in the matter under discussion since it involves avoiding any form of conflicts of interest. In this regard, there might appear the problem of greenwashing, when the board might be tempted to distort the company's performance in relation to its sustainability practices in order to improve the company's reputation.

Another important issue worth consideration is the concept of stakeholder governance. It differs from the classical approach since it implies that the company has a number of duties to its stakeholders besides shareholders. The idea of sustainable development makes stakeholder governance even more important today.

3.3 Statutory Framework Governing Directors' Duties

Statutory obligations of directors in India are based on provisions of the Companies Act 2013

⁵ OECD, *Corporate Governance and Sustainability* (2019)

which codified the existing common law fiduciary duties. One of the key sections governing such duties is section 166 of the mentioned Act, which outlines the requirements regarding the duty to act in good faith, to take informed decisions, and to act in the best interest of the company's stakeholders.⁶

Firstly, section 166(2) states that while discharging their functions, directors must have regard for the interests of the community and environment. As a result, this section clearly integrates ESG considerations within the statutory regime. In other words, this requirement implies that there is an implicit responsibility for directors to take ESG issues into account when running the organization and making disclosures. Secondly, section 166(3) provides that directors must use reasonable care, skill, and diligence when performing their duties and must make decisions independently. For ESG-related disclosures, such duties mean that directors must analyze any sustainability claims made by the company, check whether the relevant data presented is accurate, and ensure that all disclosures can be backed up by sufficient evidence.

Other than section 166, there are other provisions in the Companies Act, 2013 that require directors to make certain actions regarding disclosures and reporting. The provisions related to financial statements, audits, and CSR activities require that directors should take measures to ensure that all the information provided to various stakeholders is accurate and complete. Although none of these provisions specifically mention ESG issues, the directors could face potential liability because of inaccurate disclosures under these sections.

In addition to the above-discussed sections, various regulations by SEBI also govern the conduct of directors when it comes to disclosures. The most relevant ones are those included in the LODR. The new requirement to prepare Business Responsibility and Sustainability Reporting (BRSR), introduced by LODR, expands the range of ESG-related disclosures that need to be made by companies.⁷

3.4 ESG Disclosures and Directors as Gatekeepers

Directors perform an essential task of corporate disclosure gatekeepers. They should provide correct, comprehensive, and reliable information. In particular, ESG disclosure is often

⁶ Companies Act, No. 18 of 2013, § 166

⁷ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

complicated; therefore, gatekeeping activities are critical. The gatekeeper role involves supervision of the process of creation and provision of disclosure, introduction of corresponding systems and controls, and ensuring accuracy of corporate sustainability reports. Thus, ESG disclosure should not be seen as a way to promote the company but rather as a reflection of the truth about its activities.

The gatekeeper activity of directors presupposes corporate disclosure accountability. Directors are supposed to make sure that all regulations are followed and no misleading information is provided. It implies analysis of the accuracy of information presented in disclosures and assessment of their credibility from the perspective of available data. Directors have to consider the issue of accountability as a part of the process.

The independence of directors also plays an essential role here because independent directors can provide a check on decisions made by the management. Thus, they can objectively estimate ESG disclosures of the company and reveal inconsistencies if any. Nevertheless, it presupposes high qualifications of independent directors who need to understand the issue of disclosures and analyze information critically.

There are board committees working on ESG disclosure. Audit committee is supposed to oversee ESG disclosures along with financial statements and other reporting activities. Risk committee assesses risks associated with ESG practice of the company.

3.5 Challenges in ESG Governance and Director Oversight

Although the responsibilities of directors related to ESG governance are expanding significantly, there are multiple issues standing in the way of successful implementation. First, there is a problem of standardized reporting frameworks. In contrast to the well-established rules of financial reports, environmental reporting can use a number of different methodologies and metrics. As a result, it becomes impossible for directors to determine the validity and accuracy of the data.

The second problem that stands out relates to environmental reports and their specific nature. Since they contain scientific and technical information, it would be hard for directors to make sense of it without any help. Consequently, external and internal experts become the primary sources for the data.

The problem of information asymmetry cannot be overlooked since directors depend on the information received from the management. The quality of such information could be doubtful, so directors will have problems evaluating the information received.

It is worth noting that the problem of lacking legal regulation in the case of environmental disclosure should not be disregarded. Since there is no strict definition of greenwashing, it would be hard for directors to decide when something crossed the line. Therefore, it could be hard to regulate the process effectively.

There is also an issue of conflicts between the short-term financial goals of the firm and environmental objectives. The latter are often considered to be less important than profits, and, therefore, directors may be reluctant to support sustainable practices.

3.6 Emerging Trends and Future Directions

Several trends have emerged in relation to corporate governance and ESG disclosures that may impact the duties of directors. For instance, mandatory reporting and harmonized reporting frameworks appear to be gaining popularity. It is believed that the lack of standardized frameworks leads to the distortion of information and the prevalence of greenwashing in business operations. Thus, the implementation of mandatory and harmonized reporting frameworks may help eliminate such problems.

Technology can also be viewed as a trend that has a considerable impact on corporate governance. For example, digital tools and data analytics may facilitate the process of ESG reporting and enhance the quality of information provided to stakeholders. However, the use of technologies also creates risks related to data protection and manipulation of information.

Stakeholder activism appears to be one more trend that should be addressed within the scope of research. Investors, consumers, and nongovernmental organizations tend to raise their voices and demand transparency, sustainability, and accountability from firms. Therefore, directors should be prepared to address such issues and consider stakeholder concerns in their work.

Finally, capacity building and training are essential to ensure proper ESG governance and disclosures. Directors should be aware of the principles of sustainability and learn how to apply them to corporate management.

3.7 Conclusion

It is evident that ESG disclosures and corporate governance are interconnected notions that have been discussed in the paper. In particular, corporate disclosures require directors to ensure the accuracy and reliability of information and report about any deviations from the established procedures. In addition, ESG disclosures imply that companies need to comply with the statutory requirements imposed by the Companies Act 2013 and the Securities and Exchange Board of India.

However, despite the existence of legislative initiatives, many issues remain unresolved. Thus, directors need to be capable of dealing with legal, technological, and ethical challenges associated with ESG governance.

CHAPTER 4

DIRECTORS' LIABILITY FOR GREENWASHING

4.1 Introduction

Although the evolution of ESG disclosures brought many benefits, including increased transparency and accountability, it also led to a problem of greenwashing. Whereas previous chapters discussed this phenomenon on the conceptual and governance levels, the current chapter highlights the legal issues that arise from this practice, especially the issue of liability of directors for greenwashing. Greenwashing, as a type of misrepresentation, raises questions regarding compliance with fiduciary duties, rules of good faith, as well as regulatory requirements.

The lack of any statutory definition of greenwashing should not be an obstacle for holding people liable for greenwashing in terms of the law. Courts and authorities are able to apply traditional laws and doctrines, despite the fact that greenwashing cases require different approach compared to traditional cases.

4.2 Nature of Greenwashing as Legal Misstatement

It can be argued that greenwashing belongs to a category of misstatements. As such, greenwashing refers to the misrepresentation of certain facts about sustainability measures taken by a company and their effectiveness. Misstatements are possible in several forms: statements can contain outright falsehoods, fail to provide all necessary information or, despite

being truthful themselves, lead to wrong conclusions due to the lack of context. The ESG disclosures can contain all of those misstatements and others as well.

Misstatements are governed by their potential consequences, primarily on the investor as a stakeholder. For the statements to be actionable, they should be material, which is quite likely given the current trend towards sustainability.⁸

Companies report financial errors through their financial statements but they disclose environmental social and governance mistakes through their narrative reports. The process becomes problematic because people cannot determine which corporate statements are acceptable and which ones constitute deceptive behavior. The law needs to establish boundaries which separate genuine sustainability communication from deceptive practices.

4.3 Fiduciary Breach and Directors' Accountability

Directors assume responsibility for greenwashing activities because their fiduciary duties connect directly to their greenwashing practices. Directors have a legal duty to act honestly and to protect company interests while considering environmental and community needs according to Section 166 of the Companies Act 2013.⁹

In what ways may the greenwashing activities by the directors constitute a violation of the above-stated duties? The duty of good faith is violated when misleading environmental claims are approved by the directors on purpose. At the same time, even when there is no intent, a lack of due diligence concerning verification of ESG-related claims could be regarded as the violation of the duty of care.

The duty of loyalty further strengthens this obligation by prohibiting directors from actions which are likely to harm the corporation. Since greenwashing involves misleading for increasing company's reputation rather than making any actual changes, this practice could potentially lead to a breach of the duty of loyalty, because greenwashing makes the company vulnerable to different types of risks.

⁸ Jill E. Fisch, *Making Sustainability Disclosure Sustainable*, 107 Geo. L.J. 923 (2019)

⁹ Companies Act, No. 18 of 2013, § 166

Finally, directors should consider the concept of 'proper purpose'. They should only utilize their powers for legitimate purposes, and not to mislead stakeholders about the performance and results of the organization. Using misleading information regarding sustainability narratives in this way would be considered as misuse of powers and could result in director's liability.

4.4 Liability under Corporate Law

There are several possibilities under corporate law to pursue those who commit the misleading disclosure of information, especially related to greenwashing. Sections 34 and 35 of the Companies Act 2013 provide criminal and civil liability for misstatements made in offering documents and in connection with fraudulent activities.

These two sections specifically deal with the cases of misleading statements in prospectuses and fraudulent conduct of corporate officials and organizations. Thus, if misleading information regarding the company's sustainability claims is disclosed through such means, directors who approve such a disclosure could become subject to liability.¹⁰

Section 447 of the law establishes a comprehensive system which enables authorities to investigate fraudulent activities. The law prohibits any acts which involve hiding information or making false statements or using power for deceitful purposes. The provision applies to greenwashing situations which organizations intentionally use to present false information about their ecological achievements.

The corporate law framework also recognizes the concept of derivative actions which enable shareholders to file lawsuits against directors who violate their duties to the company. The mechanism serves as a solution to resolve situations where greenwashing activities cause damage to the organization.

4.5 Liability under Securities Law

Securities law establishes essential regulations which govern corporate financial reporting while safeguarding investor interests. The Securities and Exchange Board of India establishes disclosure standards which listed companies must follow through its Listing Obligations and Disclosure Requirements (LODR) Regulations in India. These regulations require listed

¹⁰ Companies Act, No. 18 of 2013, §§ 34–35, 447

companies to report important details while maintaining the accuracy and completeness of their disclosures.¹¹

The requirement violations, which result from companies providing false ESG disclosures, lead to enforcement actions and fines. Directors, who serve as primary decision-makers, face legal responsibility for these breaches. The materiality concept functions as a fundamental element because ESG data now drives investment choices.

Business Responsibility and Sustainability Reporting (BRSR) requires companies to disclose comprehensive details about their environmental and social operations, which has resulted in broader disclosure requirements. The system improves transparency, yet it creates greater potential for greenwashing because companies can choose to show only specific parts of their operations. Directors have to show more careful attention when they handle these disclosure matters.

Securities law regulates both market manipulation activities and investor protection procedures. ESG claims that deceive others create market distortions which result in improper resource distribution. Regulatory authorities possess investigatory power which enables them to investigate unethical practices while imposing financial penalties and restricting market access.

4.6 Practical Challenges in Imposing Liability

The existing legal frameworks fail to provide effective solutions for establishing liability against greenwashing, which remains an ongoing problem. The main challenge arises from establishing whether someone possessed either intent or knowledge. Greenwashing cases mostly involve minor deceptive practices, which do not fulfill the fraud threshold. The determination of liability becomes more challenging because directors contend that they depended on management and external expert information.

The absence of standardized ESG metrics further exacerbates the problem. The absence of specific benchmarks makes it impossible to determine whether the disclosure contains misleading information. The situation creates uncertainty because both regulators and courts

¹¹ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

face challenges which make enforcement processes less effective.

The process of proving misrepresentation requires parties to meet a significant evidentiary burden. ESG disclosures require detailed processing of technical and complex information which needs specialists for assessment.

CHAPTER 5

COMPARATIVE AND REGULATORY ANALYSIS

5.1 Introduction

The study shows how different countries use their regulatory systems to handle greenwashing cases and directorial misconduct through its detailed comparison of various regulatory systems. The research shows that the best practices from the United Kingdom and the United States can be used to evaluate their applicability in the Indian legal system.

5.2 United Kingdom Approach

Directors in the United Kingdom work under the Companies Act 2006 which establishes their duties through a law that requires them to consider the interests of all stakeholders. The corporate governance framework requires directors to assess how their business operations will affect both environmental and community well-being according to Section 172 which mandates directors to assess these two factors.¹²

The UK regime is also marked by high levels of transparency and disclosure. Disclosure of adequate information related to the performance of the companies (both financial and non-financial), including environmental impact, is required. There may be some liabilities arising from false or misleading disclosure of financial information under both corporate and securities law.

Finally, there are some signs that greenwashing can be dealt with in the UK through regulatory actions and guidance. The Financial Conduct Authority issued regulations to ensure the clarity, fairness, and lack of misleading sustainability claims. This shows the growing recognition of greenwashing as an issue for regulators.

¹² Companies Act 2006, c. 46, § 172 (UK)

5.3 United States Approach

An enforcement-based approach prevails in the United States, where securities laws and class action suits form an essential part of the system. Strict liability for misleading statements is one of the cornerstones of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Enforcement action and class action suits have been an integral part of the US regime. Investors have legal rights to sue companies and directors regarding misrepresentation and misleading disclosures. Furthermore, the Securities and Exchange Commission plays a crucial role in enforcing regulations.

Recent attempts by the SEC to deal with ESG disclosures show a trend toward the consideration of greenwashing issues in the future.

5.4 Lessons for India

Your training data includes information which extends until the month of October in the year 2023. The comparative analysis provides multiple lessons which Indian researchers can study. The analysis shows that regulatory standards need defined requirements which need to be delivered in an understandable format. The jurisdictions which have established precise disclosure standards together with their associated verification processes can effectively combat greenwashing activities.

The enforcement functions as a critical element which needs to be understood. Organizations need to establish strong enforcement systems which include both regulatory penalties and legal action to achieve compliance. The Indian framework functions as a complete system according to theoretical aspects but it encounters difficulties during actual execution and enforcement procedures.

The assessment demonstrates that companies need independent verification together with standardized ESG disclosure methods. Organizations which demand independent verification of their sustainability reports gain higher levels of trust and transparency. India needs to implement these practices because they will improve the trustworthiness of its disclosure systems.

5.5 Conclusion

The comparative analysis demonstrates that regulators need to establish a stronger system which combines multiple elements and needs to control greenwashing while establishing director accountability. The Indian legal system creates a basic framework which establishes responsibility but needs to evolve further to handle the complicated nature of ESG disclosure requirements.

India can improve its corporate governance system through international best practices which it can adapt to its unique national conditions. The results will lead to improved corporate governance because organizations will establish higher levels of transparency and responsibility which will help them achieve sustainable development.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

Up to now, the issue of greenwashing has been analyzed from various perspectives within the scope of corporate governance, directors' duties, and developing ESG reporting requirements. Therefore, the matter of concern turns out to be not limited to misleading advertisement; it appears to be a broad governance issue that involves elements of legislation, financial market practices, ethics, and environment policies. With the rise of impact investing and the increasing role of sustainability narratives in shaping the behavior of investors and the reputation of corporations, the validity of those narratives gains critical importance.

This chapter aims to summarize the main conclusions drawn from the research, assess the appropriateness of existing laws and regulations regarding greenwashing and suggest possible improvements to make the regulation more efficient. The conclusion of the analysis will be that greenwashing needs to be considered not only as an issue of incomplete disclosure but also as a breach of duty that calls for a stricter approach to regulation.

6.2 Main Research Conclusions

One of the key findings of this research is that greenwashing is an intrinsic feature of contemporary corporate governance system. It occurs due to information asymmetry, non-standardization of ESG reporting systems and, most importantly, the high commercial value of

sustainability. Today corporations actively use environmental claims as means of attracting investments and building their brands despite the lack of changes in operation.¹³

The research demonstrates that the Companies Act 2013 establishes directors' responsibilities through its legal framework which develops greenwashing solutions but fails to provide clear guidelines for ESG disclosure processes. The section 166 of the law introduces stakeholder requirements which include environmental aspects to establish a more comprehensive accountability framework. The lack of specific instructions about how to implement these duties for ESG monitoring purposes creates enforcement uncertainty.¹⁴

The research demonstrates that current liability systems face restrictions which prevent them from handling ESG-related issues. The existing provisions for misrepresentation and fraud and disclosure obligations fail to address greenwashing because they lack design elements which handle ESG-related content. The subjective and qualitative nature of sustainability claims makes it difficult to establish the threshold for liability. Greenwashing cases create a situation where legal responsibility remains unidentified because of the existing legal framework. The research demonstrates that regulatory authorities which include the Securities and Exchange Board of India hold essential power to determine ESG disclosure standards. Business Responsibility and Sustainability Reporting (BRSR) marks a crucial achievement which improves transparency through its implementation. The effectiveness of these frameworks suffers because organizations do not have to conduct mandatory verification and authorities lack the ability to enforce regulations consistently.¹⁵

The United Kingdom and the United States have established stronger systems for handling deceptive disclosures because these countries developed better enforcement procedures and litigation systems according to the study's comparative analysis. The Indian systems need to learn from these international systems about how to create standardized processes and conduct verification tasks and handle regulatory matters.

The study demonstrates that corporate governance systems need board control and independent board members and audit divisions to function properly. The systems established for

¹³ OECD, *Corporate Governance and Sustainability* (2019)

¹⁴ Companies Act, No. 18 of 2013, § 166

¹⁵ Securities and Exchange Board of India, *Business Responsibility and Sustainability Reporting* (2021)

accountability purposes will only succeed when directors display proper skills and maintain their independence and fully participate in their duties. The existing system permits greenwashing because it fails to provide adequate monitoring which conflicts with actual operational requirements.

6.3 Critical Evaluation of the Legal and Regulatory Framework

The existing framework evaluation shows that corporate governance principles maintain solid foundations but their implementation for ESG disclosures faces serious deficiencies. The primary limitation lies in the absence of a clear legal definition of greenwashing. The absence of such a definition creates challenges in distinguishing between authorized sustainability communication methods and deceptive practices. The enforcement process becomes less effective because companies take advantage of regulatory uncertainties which exist due to this unclear situation.

The system depends on general rules which relate to fraud and misrepresentation as its primary restriction. The provisions mainly focus on financial disclosure requirements but they do not completely address the specific requirements of ESG reporting. The application of materiality becomes more complex when dealing with environmental claims because these claims involve both long-term and indirect consequences which securities law considers essential.¹⁶

Fragmentation is another weakness in the current regulatory regime since the disclosure of ESG issues depends on corporate legislation, securities regulation, and voluntary codes of conduct. Thus, there is no comprehensive legislative approach in place to combat greenwashing.

Enforcement constitutes an equally relevant limitation since regulatory authorities are empowered to monitor and enforce the existing rules. However, practical difficulties related to resource scarcity, technical complexity, and procedural delays undermine the enforcement process. The investigation of greenwashing requires particular skills and the availability of data necessary to establish evidence.

Verification of ESG-related claims by independent experts is yet another problem that hampers the existing regulatory regime. Financial reporting practices require the auditing of data

¹⁶ Jill E. Fisch, *Making Sustainability Disclosure Sustainable*, 107 Geo. L.J. 923 (2019)

provided by companies. By contrast, sustainability reports tend to rely on the self-reported information which can easily become inaccurate or biased.

The limitations pertaining to directors' responsibilities should also be addressed since they play a crucial role in corporate governance processes. It is possible that directors would lack the knowledge needed to analyze relevant data in a proper manner. Besides, independent directors might hesitate because they do not want to become involved in potential legal disputes.

However, it is worth mentioning that the current regulatory regime has some advantages that allow for its development. For instance, the incorporation of stakeholders into corporate legislations and the establishment of ESG reporting requirements are important achievements that provide ground for further reforms.

6.4 Recommendations for Strengthening Directors' Liability and ESG Governance

Given these gaps in the field, there is a need for a number of changes to deal with the problem of greenwashing and to make it easier to hold directors accountable.

One of the crucial suggestions in this regard relates to the creation of a statute defining the concept of greenwashing. Such a statute would have to provide for various kinds of greenwashing, from false statements and omissions to confusing language used when making claims about a company's sustainability.

There should be a standardization of ESG reporting frameworks, which can make such disclosures more comparable and credible. It is imperative that those who engage in creating such reporting frameworks adopt the metrics employed by similar reporting mechanisms around the world.

It is vital to introduce mandatory independent verification of ESG reporting. Sustainability reports should undergo an external assessment to check their validity, just like financial reports do today.

More robust mechanisms to enforce regulations concerning ESG disclosures will be required. SEBI and other regulators will need additional resources to investigate potential greenwashing and penalize the guilty parties. The involvement of technology is crucial here.

The strengthening of director accountability through legal requirements and capacity building will be needed. In order for directors to be able to oversee sustainable disclosures more efficiently, special training programs need to be implemented to teach them about greenwashing.

It will be essential to strengthen corporate governance mechanisms so that they could cope better with overseeing ESG disclosures and holding the management accountable. Special board committees and, perhaps, inclusion of sustainability experts into boards might prove helpful in this respect.

Promotion of stakeholders' awareness is also necessary in this case. Investors need to know how to properly assess the credibility of sustainable disclosures, and one way to promote their understanding is to introduce public databases of information about companies' practices and ESG reporting.

Last but not least, an integrated approach to regulation is crucial for this purpose. Given that greenwashing intersects with various areas of law, it is vital to create an integrated framework regulating the issue.

6.5 Policy Implications and Future Directions

Moreover, in light of the current findings, it may also be recommended that policymakers should recognize that the main goal of ESG disclosures by companies is to impact market behavior and affect resource allocations in specific directions. Thus, the credibility of such reports should be guaranteed by the corresponding regulations, which is crucial for the overall market efficiency.

As follows from the above analysis, in the future, policymakers are supposed to make additional efforts to develop new regulations in terms of standardizing ESG reports, verifying information in these reports, and enforcing sanctions on those who violate the requirements. Moreover, the global focus on climate risk reporting and sustainable finance implies the need to pay much attention to the evolution of ESG regulation.

The role of technology in the field under consideration is also expected to become more prominent in the future. In fact, digital tools and techniques can make ESG reporting and

verification of information more efficient and less burdensome.

Finally, the integration of ethical aspects into corporate governance is necessary for solving the problem at hand. The discussed above legal and regulatory reforms can serve only as an additional instrument for dealing with greenwashing; a culture of ethical behavior should be cultivated by the directors and executives.

6.6 Concluding Remarks

In sum, greenwashing constitutes a crucial issue related to modern corporate governance. Since sustainability gains more prominence within corporate strategies and is considered in decision-making regarding investments, ESG disclosures gain particular significance and have to be treated seriously. While this paper has shown that existing legal frameworks are sufficient for tackling the discussed problem, some steps are still to be taken.

Firstly, it is important to stress that directors play a pivotal role in addressing greenwashing through exercising their duties effectively. Besides being responsible for meeting legal obligations, they should guarantee that corporate governance is accompanied by the corresponding ethics, which is necessary for the sustainability of the corporation in the long run.

Thus, the problem of greenwashing can be solved with the help of legal and ethical measures. Enhanced disclosure standards, additional duties for directors, and the establishment of ethical principles are to be prioritized.

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