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# FROM VOLUNTARISM TO ENFORCEABILITY: A LEGAL CRITIQUE OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE ASSURANCE FRAMEWORKS UNDER INDIAN SECURITIES LAW AND THEIR IMPLICATIONS FOR INVESTORS' PROTECTION

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## ABSTRACT

The progressive integration of Environmental, Social, and Governance (ESG) metrics into corporate disclosures has fundamentally reshaped the regulatory landscape of securities markets globally. In India, the transition from voluntary ESG disclosures to mandated ESG assurance, epitomized by SEBI's introduction of the Business Responsibility and Sustainability Report (BRSR) Core & associated assurance framework, marks a significant inflection point in the regulatory treatment of non-financial information. This research undertakes a critical legal appraisal of the evolving ESG assurance architecture under Indian securities law, interrogating its normative underpinnings, statutory coherence, and enforceability. The shift from voluntarism to enforceability is examined through the lens of regulatory theory, investor protection, and disclosure jurisprudence. It argues that while ESG assurance aims to enhance the credibility and comparability of ESG disclosures, its current implementation suffers from regulatory ambiguity, lack of harmonized assurance standards, and insufficient legal accountability for assurance providers. The research further scrutinizes the juridical authority of SEBI's circulars in mandating such frameworks, raising concerns about delegated legislation, rule-of-law compliance, & constitutional validity of quasi-legislative norms. By situating the Indian experience within a comparative international framework, including the EU's Corporate Sustainability Reporting Directive (CSRD) & US SEC's ESG disclosure initiatives, the research delineates normative gaps and policy divergences. It contends that a robust, legally codified ESG assurance regime, grounded in principles of materiality, transparency, and enforceability, is indispensable to protect investors from the perils of greenwashing and informational asymmetry. This research calls for a calibrated regulatory architecture that reconciles the exigencies of investor protection with the institutional limitations of the Indian securities market.

*Keywords: ESG, SEBI, Investor Protection, Indian Securities Law, Greenwashing, Corporate Governance*

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## INTRODUCTION

The ascendancy of ESG considerations from the periphery of corporate strategy to the core of investment decision-making represents a paradigmatic shift in global financial markets. ESG is no longer merely a matter of ethical investing or corporate social responsibility; it has evolved into a material factor that directly influences firm valuation, access to capital, and long-term financial performance. Institutional investors and asset managers increasingly integrate ESG metrics into portfolio construction, risk management, and shareholder engagement strategies. This transformation is reflective of a broader reconceptualization of fiduciary duty, wherein financial prudence now arguably entails due consideration of non-financial risk vectors, including climate risk, social license to operate, and governance integrity (Review, 2022).

Concomitant with this evolution is a heightened demand for credible, standardized, and comparable ESG disclosures. Globally, regulatory and quasi-regulatory initiatives such as the EU CSRD, the IFRS Foundation's ISSB standards, & US SEC's proposed climate disclosure rules seek to institutionalize ESG reporting within the broader architecture of financial disclosure. However, a recurring point of contention lies in the verifiability of such disclosures. In the absence of mandated assurance mechanisms, ESG data is often characterized by subjectivity, inconsistent methodologies, and susceptibility to greenwashing. The push for independent third-party assurance thus emerges not only as a technical safeguard but as a legal imperative to preserve market integrity and investor confidence (Bohn et. al., 2024).

India's regulatory landscape reflects this global momentum, albeit with jurisdiction-specific nuances. The SEBI has progressively transitioned from a regime of voluntarism to one of calibrated enforcement, particularly through the introduction of the BRSR. With the BRSR Core & 2023's guidelines on ESG assurance, SEBI seeks to institutionalize a framework that mandates ESG disclosures for the top 1,000 listed entities, while progressively introducing third-party assurance requirements. This regulatory trajectory signifies a shift in the legal characterization of ESG from being merely aspirational to being enforceable under securities law, a shift that raises complex questions about legal enforceability, standardization, accountability, and investor protection within the Indian capital markets framework.

## ESG REPORTING AND ASSURANCE: GLOBAL AND INDIAN PERSPECTIVES

The evolution of ESG reporting standards at the global level reflects a concerted regulatory and market-driven effort to embed sustainability metrics within the fabric of corporate governance and financial disclosure.

Frameworks, such as the GRI, SASB, TCFD, & ISSB, have each advanced differing yet converging approaches to ESG materiality. While GRI promotes an authorities-oriented perspective emphasizing impact materiality, SASB and TCFD advance financial materiality aimed primarily at investors. The ISSB, formed under the IFRS Foundation, represents a significant attempt at harmonization, consolidating SASB and TCFD elements into a unified baseline. Concurrently, the EU's CSRD mandates not only detailed ESG disclosures but also assurance thereof, signaling a transition from mere narrative reporting to externally validated, investor-relevant data (Lerner, 2023).

Integral to this global regulatory maturation is the growing emphasis on independent third-party assurance of ESG disclosures. Standard-setting bodies such as the International Auditing and Assurance Standards Board (IAASB) and AccountAbility have proposed frameworks like ISAE 3000 (Revised) and AA1000AS to govern such assurance engagements. These frameworks impose rigorous requirements relating to objectivity, professional skepticism, and audit quality, albeit without a universally binding legal mandate outside specific jurisdictions. The divergence in assurance standards, particularly between limited and reasonable assurance, creates challenges in consistency, comparability, and legal enforceability. Yet, the overarching aim remains clear: to enhance the reliability and integrity of ESG disclosures, thereby addressing concerns of greenwashing and facilitating more accurate risk pricing by investors (Lessambo, 2018).

In the Indian context, the trajectory of ESG disclosure regulation has witnessed a paradigm shift, catalyzed by both global developments and domestic policy imperatives. Initially grounded in a voluntary ethos through the Business Responsibility Reports (BRR) framework introduced by SEBI in 2012, ESG disclosure gradually assumed a more structured and mandatory character with the rollout of BRSR in 2021. The BRSR, tailored to align with global frameworks, represented a normative upgrade in both scope and granularity. SEBI's 2023 mandate introducing *BRSR Core*, a subset of quantifiable Key Performance Indicators (KPIs) subject to reasonable assurance, further entrenched ESG within the regulatory ecosystem. These shifts reflect a calibrated regulatory intent to move from corporate self-reporting to externally verifiable sustainability data, aimed at protecting investor interests and promoting market integrity (Ramakrishnan, 2023).

Notably, SEBI has applied these enhanced ESG obligations primarily to the top 1,000 listed entities by market capitalization, recognizing both the systemic relevance of such entities and their comparative capacity to absorb compliance costs. This stratified imposition is emblematic of SEBI's phased approach, seeking to balance regulatory ambition with industry preparedness. Nevertheless, the BRSR Core's assurance requirements have raised critical legal and policy questions. These include concerns regarding standardization of assurance practices, competence and independence of ESG assurance providers, & legal enforceability of

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non-financial disclosures under existing securities law architecture. As Indian securities regulation pivots toward substantive ESG oversight, the adequacy of its institutional, legal, and normative infrastructure remains a subject of pressing concern (Andressen et. al., 2023).

**LEGAL FACETS GOVERNING ESG ASSURANCE IN INDIA**

The SEBI, as the principal regulator of securities markets, has taken proactive steps to mainstream ESG disclosures, culminating in the issuance of BRSR framework and its core variant for mandatory implementation. Under the SEBI (LODR), 2015, ESG reporting is now framed within the broader mandate of continuous and material disclosure by listed entities. SEBI's 2023 circular introducing "BRSR Core" and mandating limited assurance for select ESG KPIs marks a definitive shift from voluntary reporting to regulatory compulsion. However, the legal nature of these circulars and guidelines, although issued under delegated authority, raises questions of enforceability, particularly in the absence of formal amendment to the LODR regulations. Judicial pronouncements such as *SEBI v. Sahara India Real Estate Corp* ((2012) 10 SCC 603) have reinforced that SEBI's circulars, where rooted in statutory delegation, possess binding effect; however, the fine line between "guidelines" and "rules" continues to pose interpretative challenges in enforcement proceedings.

Beyond SEBI's regulatory domain, the broader statutory scaffolding derives from the Securities Contracts (Regulation) Act, 1956, which provides the legal foundation for SEBI's power to regulate disclosures by listed companies, & Companies Act, 2013, which indirectly supports ESG assurance through provisions relating to financial disclosures, audit committees, & directors' responsibility statement under Section 134. Audit committees, under Section 177, are now indirectly implicated in ESG assurance oversight, particularly for top 150 listed entities where ESG becomes part of material risk governance. Furthermore, the assurance regime touches upon statutory auditor responsibilities, although ESG metrics remain non-financial in nature, thereby creating regulatory gaps that fall outside the traditional scope of audit assurance under the Companies Act. Notably, the interplay between these frameworks is yet to be harmonized by a unified legislative or regulatory mandate that treats ESG assurance as a distinct legal obligation rather than an extension of financial reporting (Jena, 2020).

The professional regulation of ESG assurance providers currently lacks a bespoke legal framework, and is subsumed under existing standards of audit and assurance laid down by bodies such as the Institute of Chartered Accountants of India (ICAI) and supervised by the National Financial Reporting Authority (NFRA). ICAI's Guidance Note on ESG Assurance, though recently introduced, remains advisory in nature and lacks statutory force. It does, however, attempt to align with international standards such as ISAE 3000, thereby offering a professional benchmark. Nevertheless, the current absence of statutory qualification criteria specific to ESG assurance, & discretionary leeway given to companies in selecting assurance providers, raise critical issues of independence, competence, and conflict of interest. These concerns are compounded by the lack of clarity on the liability regime applicable to ESG assurance providers, especially where such assurance is relied upon by investors in capital markets (M.P. and Raj, 2023).

The legal ambiguity around who can legitimately provide ESG assurance is compounded by regulatory silence on whether non-accounting firms, consultancy entities, or sustainability-focused agencies without ICAI certification can serve in this role. The risk of regulatory arbitrage is high, particularly when assurance statements influence investor decisions and securities valuations. In the absence of judicial precedent directly addressing ESG assurance, principles from analogous contexts, such as the Supreme Court's dicta in *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.* ((2000) 5 SCC 694) on auditor liability, may be extended to argue that professionals offering assurance services owe a duty of care not only to their clients but also to third-party authorities. Unless a clear statutory scheme delineates the duties, liabilities, and regulatory oversight applicable to ESG assurance providers, SEBI's ESG assurance framework may remain susceptible to challenge on grounds of legal enforceability and procedural vagueness.

## FROM VOLUNTARISM TO ENFORCEABILITY: CRITICAL LEGAL ISSUES

### *Conceptual Shift and Its Justification*

The transition of ESG disclosures from a voluntary to a mandatory regime within Indian securities law marks a fundamental reconceptualization of what constitutes "material information" in corporate reporting. Traditionally, materiality in securities regulation has been confined to financial performance indicators and statutory compliance. However, the increasing recognition that ESG factors can have a substantial impact on a company's long-term financial health and systemic market risks has necessitated their incorporation into the materiality calculus. Judicial precedents have reiterated the need for full and fair disclosure, underscoring that materiality must be interpreted purposively in light of investor reliance. ESG information, particularly when assured, assumes the status of potentially price-sensitive information, thereby implicating both disclosure obligations and liability regimes under the securities framework (Pollman, 2019).

The SEBI justifies its regulatory intervention by invoking its statutory mandate under Section 11(1) of the SEBI Act, 1992, which empowers it to protect the interests of investors and to promote the development of, and regulate, the securities market. The shift toward enforceable ESG assurance aligns with this mandate, particularly in view of the growing incidence of greenwashing& asymmetry of ESG data available to retail

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investors. The materialization of climate and social risks in capital markets has lent urgency to this evolution. However, this shift raises fundamental questions of regulatory legitimacy and scope: whether investor protection encompasses non-financial disclosures, and whether the existing legislative architecture is sufficiently capacious to sustain this expansion in regulatory power.

*Legal Challenges in Transition*

One of the most immediate impediments in operationalizing enforceable ESG assurance in India is the absence of harmonized and binding assurance standards. While SEBI's circulars prescribe limited assurance for certain BRSR Core parameters, they fall short of stipulating a uniform framework equivalent to international standards such as ISAE 3000 or AA1000AS. This regulatory lacuna leaves assurance providers with significant interpretive discretion, resulting in variability in assurance outcomes and undermining the comparability and reliability of ESG disclosures. Such variability may run afoul of the doctrine of legal certainty, a foundational principle of administrative law, particularly where compliance obligations are backed by regulatory sanction (Li et. al., 2024).

The absence of clarity regarding the scope and methodology of ESG assurance aggravates the problem of discretion. SEBI's guidelines leave material room for assurance providers to determine the scope, depth, and procedures applicable to ESG audits. This not only complicates standard-setting and benchmarking but also raises concerns of regulatory arbitrage, wherein issuers may selectively procure less rigorous assurance services to satisfy formal requirements without substantive compliance. Moreover, the discretionary room afforded to assurance providers lacks adequate regulatory oversight or quality control mechanisms, raising potential conflicts of interest, especially in the absence of a licensing or accreditation regime under the Companies Act or SEBI regulations (Neumann and Forthmann, 2024).

Enforcement mechanisms for ESG assurance obligations remain both embryonic and ambiguous. While SEBI may issue penalties or directives under the LODR Regulations for non-compliance, there is no clear articulation of the threshold for breach in the context of ESG misstatements. Furthermore, the status of ESG assurance statements as legally binding representations under securities law is uncertain. This uncertainty hampers the ability of SEBI or aggrieved investors to pursue remedial action under sections governing misrepresentation, such as Section 12A of the SEBI Act or Section 447 of the Companies Act, which deal with fraudulent practices. The lack of jurisprudence and regulatory guidance on ESG-specific enforcement further compounds this uncertainty.

The expanding regulatory perimeter of ESG assurance raises serious questions under the constitutional and administrative law principle of proportionality. Any imposition of mandatory assurance obligations must demonstrate a legitimate aim, be suitable to achieve that aim, and be the least restrictive means available. While investor protection is a legitimate aim, the imposition of mandatory third-party assurance, without a robust regulatory framework for standardization and oversight, may not meet the proportionality test. This is particularly so in the context of smaller listed entities that may lack the resources to comply, thereby inadvertently skewing compliance burdens in a manner that is not commensurate with risk exposure (Duran and Tierney, 2023).

Additionally, there is a latent risk that the ESG assurance regime may devolve into a mere compliance formality, what has been termed a “tick-box” exercise, rather than catalyzing substantive improvements in ESG governance. This critique has found traction in comparative jurisdictions, particularly within the EU’s regulatory discourse, where concerns have been raised that over-regulation may inadvertently incentivize minimal compliance rather than meaningful integration of ESG principles. The Indian framework risks similar pitfalls, especially in the absence of sector-specific guidance, board-level accountability mechanisms, and authorities’ engagement in assurance design.

Hence, the legal transition from voluntarism to enforceability in ESG assurance represents a paradigmatic shift in securities regulation, one that seeks to align corporate conduct with broader societal and environmental imperatives. However, without a clearly delineated statutory basis, standardized assurance protocols, and enforceable accountability norms, this shift may generate more uncertainty than confidence.

## COMPARATIVE ANALYSIS AND LESSONS FROM OTHER JURISDICTIONS

*EU Corporate Sustainability Reporting Directive (CSRD): Mandated Assurance and Third-Party Verifier Standards*

The EU’s CSRD represents a paradigmatic shift in the legal treatment of sustainability disclosures, transforming what was once an exercise in voluntary reporting into a mandatory regulatory obligation. Under the CSRD, large EU companies and certain non-EU entities with significant operations within the EU are required not only to disclose ESG-related information but to subject such disclosures to independent limited assurance, with a roadmap for progression to reasonable assurance. This legal obligation is embedded in a harmonized European sustainability reporting framework, supported by the European Sustainability Reporting

Standards (ESRS), and subject to oversight by independent and competent third-party verifiers. Notably, the CSRD mandates that assurance providers must meet standards of independence, professional competence, and registration with a national authority. This legislated standard-setting contrasts starkly with India's current reliance on guidance and circulars from regulatory authorities such as SEBI and ICAI, which, while prescriptive, lack the force and specificity of statutory mandates (Muller, 2022).

*The EU's Regulatory Architecture and Its Implications for Legal Enforceability*

The CSRD's incorporation into the broader EU legal framework, through directives binding upon Member States, endows its ESG assurance regime with substantial legal gravitas. The assurance requirements are framed not merely as governance best practices but as enforceable obligations under securities and financial law. The European Commission's recognition of sustainability information as material to investor decision-making underpins this transition. The legal architecture thereby facilitates a rights-based approach wherein investors may expect and demand credible ESG information. In this context, assurance is not an ancillary control mechanism but a legal safeguard that upholds the integrity of capital markets. This structural integration is notably absent in the Indian context, where ESG assurance remains procedural and largely untested before courts or quasi-judicial bodies.

*US SEC Climate Disclosure Proposals: Voluntary vs Mandated Assurance*

In the US, the Securities and Exchange Commission (SEC) has proposed a more cautious, though still significant, approach toward ESG assurance. Under the SEC's proposed climate disclosure rules, public companies would be required to disclose their Scope 1 and 2 greenhouse gas emissions, with limited assurance obligations initially imposed on larger filers. This reflects a tiered, phased methodology that seeks to balance investor protection with compliance feasibility. The SEC's approach evidences a recognition of the political and institutional constraints inherent in mandating assurance in a jurisdiction with a deeply adversarial regulatory culture. Importantly, unlike the EU, the US model reflects a principles-based regulatory orientation, emphasizing materiality and investor interest without hardwiring a single global reporting or assurance framework. This legal conservatism allows for contextual evolution of assurance practices, even as it signals a growing acknowledgment of ESG data as securities-relevant (Zhao, 2022).

*The Normative Debate on Mandatories in the US Context*

The U.S. debate has revolved around the normative legitimacy of compelling corporate ESG disclosures and assurance through securities regulation. The SEC's proposals have been subject to public consultation, legal critique, and lobbying that underscores the contested terrain ESG occupies within American administrative law. Critics argue that mandating ESG assurance without a clear statutory basis may exceed the SEC's rulemaking authority under the Securities Exchange Act, 1934. This jurisprudential tension is instructive for India, where the constitutional and administrative foundations of SEBI's powers remain under-explored in the ESG context. It raises important questions about the necessity of legislative action, rather than regulatory guidance alone, to establish an enforceable ESG assurance regime with legal certainty.

*Lessons for India: The Dangers of Premature Enforcement*

The Indian regulatory model, characterized by its rapid embrace of ESG assurance mandates via the BRSR Core framework, risks outpacing institutional preparedness. A key lesson from both the EU and US experiences is that the transition from voluntarism to enforceability must be legally and operationally scaffolded. The SEBI-mandated assurance requirements, while ambitious, may confront enforceability challenges if underlying procedural safeguards, professional standards, and liability mechanisms are not coherently established. India must avoid the perils of regulatory formalism, whereby assurance is mandated in form but remains deficient in substance due to the absence of harmonized standards and independent regulatory oversight of assurance providers (Hanna, 1934).

The comparative jurisdictions underscore the necessity of strengthening institutional ecosystems prior to the imposition of enforceable ESG assurance obligations. In the EU, accredited verifiers are subject to uniform EU-wide standards, while in the US, professional assurance practices are underpinned by decades of SEC and PCAOB oversight. In contrast, India lacks a specialized regulatory infrastructure for ESG assurance, with current reliance placed on audit firms governed by ICAI and NFRA. The absence of a dedicated accreditation framework or assurance quality review mechanism dilutes both credibility and legal enforceability. Therefore, institutional capacity building, in terms of training, oversight, and standards setting, must precede the transition to mandatory assurance if investor interests are to be meaningfully protected (Harper, 2024).

Any regulatory borrowing from the EU or US must be calibrated to the peculiarities of the Indian capital markets, which are characterized by a high retail investor base, variable corporate governance practices, and limited ESG literacy. A phased, risk-based approach to enforcement, beginning with large-cap companies and expanding incrementally, would allow regulatory bodies, assurance providers, and issuers to adapt in a legally coherent manner. Legal reform should prioritize the codification of ESG assurance obligations within a comprehensive statutory framework, possibly by amendment to the SEBI Act or the LODR Regulations, rather than through circulars alone. Such an approach would bolster the enforceability of ESG mandates and insulate them from challenge on grounds of ultra vires or administrative overreach.

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## CONCLUSION AND THE WAY FORWARD

The trajectory from voluntary ESG disclosures to a regime of enforceable assurance obligations under Indian securities law marks a paradigmatic shift with profound implications for regulatory architecture and investor protection. While SEBI's initiatives represent a commendable effort to enhance transparency and curb greenwashing, the current framework suffers from normative ambiguities, inconsistent enforceability, and an absence of harmonized assurance standards, thereby rendering it vulnerable to legal and operational infirmities. The lack of statutory backing for ESG assurance, coupled with the discretionary and arguably extra-statutory nature of SEBI circulars, raises pressing concerns regarding regulatory overreach and procedural legitimacy. Moving forward, a coherent legal framework is imperative, one that codifies ESG assurance obligations within the primary or delegated legislation under the SEBI Act or the Companies Act, ensuring procedural fairness, definitional clarity, and institutional accountability. This must be complemented by the development of sector-specific assurance standards, formal recognition of assurance providers through a regulatory registry, & institutional capacity-building of both market participants and regulators. A phased and consultative implementation strategy, potentially supported by a regulatory sandbox, would help mitigate compliance burdens while preserving the investor protection rationale at the heart of this regulatory evolution.

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