

THE INSIDER BLIND SPOT: WHISTLEBLOWER PROTECTION, ESG FRAUD, AND THE CASE FOR EXTERNAL RECOGNITION

by

Bhupesh Netam

NALSAR University of Law, Hyderabad

&

Somya Ranka

NALSAR University of Law, Hyderabad

ABSTRACT

This paper focuses on the theme of ESG Fraud and Greenwashing: Rethinking Corporate Accountability, analyzing the role of whistleblowing in exposing ESG-related misconduct and strengthening corporate accountability. ESG standards are now a key method for promoting corporate sustainability, transparency, and ethical governance. However, the rise in greenwashing and ESG fraud has caused concerns about the reliability of corporate disclosures and the effectiveness of current enforcement methods. This paper looks at whistleblowing as an important tool for revealing ESG-related misconduct. It also compares the whistleblower protection systems in India and the United States. Regardless of the importance of these organizations to fraud detection via disclosure, they are excluded from the existing whistleblower protection and reward systems in both countries. It is argued that current whistleblower legislation is overly focused on insiders and fails to account for the realities of ESG regulatory enforcement. A new legal mechanism to recognize and support credible external disclosures is proposed. By examining the Adani sustainability-linked bond scandal, the paper finds that serious ESG scams are usually detected not by company insiders but by non-profit organizations, independent researchers, and market analysts who work with publicly available information.

In the U.S., whistleblowers benefit from both the Dodd-Frank Act and the Sarbanes-Oxley Act, which provide strong legal safeguards, complete anonymity, and monetary rewards. In contrast, the Indian framework suffers from numerous shortcomings, including a lack of coherence and an inability to address ESG issues.

Keywords: ESG fraud; greenwashing; whistleblower protection; SEBI LODR Regulations; Sarbanes-Oxley Act; Dodd-Frank Act; corporate accountability; sustainability-linked bonds; Adani case study; disclosure-based fraud.

INTRODUCTION

With major developments around the world occurring at the cost of environmental degradation, concerns were raised during the UN Sustainable Development Summit in 2015.¹ To address this problem and advance global development while protecting the environment, the concept of sustainable development was propounded. Since many corporations operate in these industries, it was important to raise their accountability to the sphere from which they derive benefits and to society in general. With this accountability in mind, the concept of Environmental, Social, and Governance (*hereinafter*, “**ESG**”) was developed as a standard to which any corporation should adhere. It provides a framework that helps businesses grow responsibly while addressing sustainability and ethical practices.

Firstly, **Environmental**, which covers *how a company impacts the planet*, such as through its emissions, energy use, water, and waste. Secondly, **Social**, which covers *how a company treats people*, such as its employees, customers, communities, and supply chain workers. Lastly, **Governance** concerns *how a company is managed*, including its ethics, transparency, board decisions, and compliance. The focus is mainly on the audiences, i.e., investors, regulators, and the capital market. What really started this whole thing is the sustainability goal. ESG helps us measure our progress toward sustainability in our business.

ESG is more than just ethics or the duty to protect the environment; it manifests in day-to-day activities, such as when a company seeks to understand the source of the energy it uses, when investors seek to understand potential risks, and when regulators request disclosures. ESG is not a saying but rather the process by which decisions are documented and evaluated. ESG is similar to hygiene in finance; it has to be done simply because it needs to be done. If one fails to implement it, it is not fatal until rulers want a disclosure. Thus, as soon as one understands the implications of ESG, one stops thinking of it as a concept.

¹ *Transforming Our World: The 2030 Agenda for Sustainable Development*, G.A. Res. 70/1, U.N. Doc. A/RES/70/1 (Sept. 25, 2015).

This sustainability, at times, becomes marketing. Greenwashing happens when sustainability claims sound responsible, but the evidence, performance, or impact doesn't back them up. It undermines the real climate action and erodes trust. If ESG is the practice of disclosing a corporation's environmental practices, then greenwashing is the practice of manipulating that information. The consequences of greenwashing can be serious, as it affects society's lifestyle as well as the investors and stakeholders of that corporation. Trust can swiftly erode when stakeholders learn that sustainability claims are false. Customers may lose faith in the company's principles, and investors may doubt the accuracy of ESG disclosures.

Greenwashing typically begins with the use of general terms like “eco-friendly,” “clean,” and “sustainable,” which are not substantiated, followed by selective disclosures of successes while failing to mention the trade-offs and unsubstantiated claims. A case in point is the scandal surrounding Volkswagen's emissions control, known as “Dieselgate.”²

UNMASKING ESG FRAUDS AND GREENWASHING

ESG fraud and greenwashing are revealed through various mechanisms, such as institutional checks, external scrutiny, forensic auditing, and whistleblowing. For example, SEBI mandates independent third-party verification of these corporations' ESG claims rather than relying solely on self-declaration.³ Forensic auditing is another way these frauds are revealed. It enhances transparency and mitigates risks for investors and stakeholders by ensuring ESG compliance. It extends beyond assessing financial audits and moves towards non-disclosure of non-financial records concerning environmental practices and other relevant standards and policies.⁴ Whistleblowing is another such mechanism.

Whistleblowing is the process by which an employee or stakeholder reports an activity that is against the company's interests or is illegal. They act as protestors, ensuring that certain fraud and improper actions that might cause institutional or financial harm to a corporation are

² Jack Ewing, *Volkswagen Says 11 Million Cars Worldwide Are Affected in Diesel Deception*, N.Y. Times (Sept. 22, 2015), <https://www.nytimes.com/2015/09/23/business/international/vw-diesel-emissions-scandal.html>.

³ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 34(2)(f) (Business Responsibility and Sustainability Report core assurance requirement); Sheetal Patodiya, *ESG Compliance in India: New Reporting Mandates*, Maheshwari & Co. (Nov. 10, 2025), <https://www.maheshwariandco.com/blog/esg-compliance-in-india/>.

⁴ Muhammed Zakir Hossain, Annatul Islam Hredoy, Md. Jobaer Rahman Rashed, *Forensic Auditing and ESG Compliance: Detecting Fraud and Enhancing Transparency in Corporate Reporting*, Volume 2 EJMEB 109, 109 (2025).

eliminated.⁵ But becoming a whistleblower comes with many risks, such as loss of job opportunities, social isolation, persecution, and in worst cases, even physical violence.

The question then arises, how to protect these whistleblowers? The first solution that comes to mind for protecting whistleblowers is through the law. In India, the only dedicated legislation drafted, though not yet in force, to protect whistleblowers is the *Whistleblowers Protection Act, 2014*, which applies only to public sector undertakings and public servants.⁶ Apart from this, certain provisions (Sections 177(9) and 177(10), read with Rule 7 of the Companies Rules, 2014) of the Companies Act, 2013, mandate the formation of a whistleblower policy but apply only to listed companies.⁷

The SEBI Listing Obligations and Disclosure Requirements Regulations, 2015, establish a whistleblower mechanism that provides top officials and workers with a reputation for honesty a private and secure method of expressing legitimate apprehensions. Regulation 22 of the SEBI LODR mandates the setting up of a vigil mechanism for officials and workers. Section 177 of the Companies Act supports this regulation.⁸ Though neither SEBI's regulations nor the Companies Act, 2013, provides a comprehensive, standardized format for implementing the vigil mechanism, the quality of enforcement varies widely from one company to another. There is no similar criminal sanction (such as the 3-year imprisonment under the 2014 Act) for violating a whistleblower's confidentiality in the corporate context.⁹ This makes whistleblowing much riskier and ultimately deters people from reporting fraud that cannot be easily revealed or caught through audits.

WHISTLEBLOWER PROTECTIONS IN THE UNITED STATES AND INDIA: A COMPARATIVE STUDY

ESG fraud and greenwashing are hard to discover from outside an organization. Insider knowledge is required of the displayed sustainability practice and the actual practice.

⁵ Trustnet.Trade Editorial, *Understanding ESG Practices in the Context of Whistleblowing*, Indo-German Chamber of Commerce (May 23, 2025), <https://indien.ahk.de/en/igcc-newsroom/understanding-esg-practices-in-the-context-of-whistleblowing>.

⁶ The Whistle Blowers Protection Act, No. 17 of 2014, § 2.

⁷ Companies Act, 2013, No. 18 of 2013, §§ 177(9) – (10) (India), read with Companies (Meetings of Board and its Powers) Rules, 2014, r. 7; Anshul Prakash & Kruthi N. Murthy, *Guide to Whistleblowing: India Chapter*, Khaitan & Co. (Aug. 2022), <https://www.khaitanco.com/sites/default/files/2022-08/Guide%20to%20Whistleblowing%20-%20India%20Chapter.pdf>.

⁸ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 22; Amrita Desai, *Whistleblower Policy Explained: Beyond the Fine Print*, SEBI LODR Compliance Guide, FinTrac Advisors (July 15, 2026), <https://fintracadvisors.com/whistleblower-policy-explained-beyond-the-fine-print-sebi-lodr-compliance-guide/>.

⁹ The Whistle Blowers Protection Act, No. 17 of 2014, § 16.

Moreover, since greenwashing is a disclosure-based fraud, it can't be detected in the same way as financial fraud, i.e., by auditing. Whistleblowers act as agents to disclose crucial information revealing greenwashing and ESG malpractice. The whistleblowing laws in both India and the U.S. address concerns regarding whistleblowers, but the way these countries approach this aspect of protecting whistleblowers is certainly very different. U.S. law on whistleblowers is primarily based on two statutory frameworks: the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the Sarbanes-Oxley Act (2002), § 806 (*hereinafter*, **SOX**).¹⁰ Under these provisions, ESG whistleblowers receive monetary incentives for flagging malpractice. It is calculated as a share of the total monetary fine imposed on a corporation, typically around 10-30% of the sanctions.¹¹ This percentage-sharing model matters because ESG cases can involve very large monetary sanctions, making it an appealing monetary reward for whistleblowers.

Whistleblowers under the framework are granted anonymity, typically to protect them from potential retaliation, as they are often deeply involved in the corporation's practices. It is, although provided that they are represented by an attorney who maintains the confidentiality of the whistleblower. Moreover, there is a whistleblower body, the Securities and Exchange Commission (*hereinafter*, **SEC**), to which reports can be made, and under which one can obtain an award. The U.S legal framework under the SOX Act, Section 806, protects whistleblowers from being fired, demoted, harassed, or otherwise retaliated against for reporting, as ESG reporting happens internally first. The protection applies whether the person reports internally or goes to the SEC first. India also has provisions for whistleblowers, but they lack a properly structured framework, the Whistleblower Protection Act, 2014, which is not yet in force, and the framework we can derive from other provisions is restricted to certain entities and employees. The U.S. has a consolidated whistleblower law that brought ESG fraud and greenwashing under its purview. Still, there is no such recognition of these frauds in the Indian whistleblower legal framework, and the relevant provisions were not designed with them in mind. In other words, the US treats greenwashing as settled fraud while India has not yet settled whether it is fraud at all.

Additionally, to encourage whistleblowers in cases of insider trading, SEBI has introduced monetary incentives for employees who report insider trading within the company. SEBI has

¹⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act § 922, 15 U.S.C. § 78u-6 (2023); Sarbanes-Oxley Act of 2002 § 806, 18 U.S.C. § 1514A (2023).

¹¹ 15 U.S.C. § 78u-6(b)(1) (2018).

raised this monetary incentive to ₹10 crores.¹² This incentive, although it is limited to insider trading and does not directly address ESG fraud and greenwashing, creates a legal inconsistency regarding whether it applies to these areas. In comparison, the U.S. SEC model offers 10-30% of the total fine, which directly addresses the issue of whistleblowing incentives in matters concerning ESG fraud and greenwashing. Whistleblower Protection Act 2014 doesn't have an anonymity option like its American counterpart.¹³ The complainant must reveal their identity to the competent authority, but they receive no adequate protection.¹⁴

CASE STUDY: THE ADANI SUSTAINABILITY-LINKED BOND CONTROVERSY

While we are talking about whistleblowers reporting insider information regarding ESG fraud and greenwashing by companies, the sustainability-linked bond issue done by Adani Electricity Mumbai Ltd in 2021 is one such case.¹⁵ Neither the US nor the Indian whistleblower frameworks discuss this category. The bond's offering documents and second-party opinion, prepared by Vigeo Eiris, failed to disclose the issuer's corporate group ties to the Carmichael coal mine and the Abbot Point coal port.¹⁶ These omissions were later alleged to be securities fraud under Rule 10 (b) (5) and Section 17 (a) (2) of the US securities law.¹⁷ Essentially, it was not flagged by an employee or insider eligible for SOX or Dodd-Frank protection, but by the Anthropocene Fixed Income Institute (hereinafter, "AFII"), which is a Stockholm-based NGO that works entirely from public offering documents. Since the information disclosed by AFII is not considered "original" insider information under the SEC whistleblower program's definition, it would most likely not have been awarded statutory protection and a monetary reward. It is worrying that there is no proper protection for people who fall outside the whistleblowing legal regime. This calls for a mechanism that runs concurrently with the existing protective measures and can adopt whistleblowing measures, such as statutory protection and monetary compensation, as emphasized above.

¹² Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2021, Gazette of India, pt. III sec. 4 (June 29, 2021); ETMarkets.com, *SEBI Makes Reward for Whistleblowers on Insider Trading More Attractive*, Econ. Times (June 29, 2021, 5:33 PM IST), <https://economictimes.indiatimes.com/markets/stocks/news/sebi-makes-reward-for-whistleblowers-on-insider-trading-more-attractive/articleshow/83953473.cms>.

¹³ The Whistle Blowers Protection Act, No. 17 of 2014, § 4(1).

¹⁴ Whistle Blower Portal Under the Companies Act, Press Info. Bureau, Ministry of Corporate Affairs (Dec. 17, 2024), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2083815>.

¹⁵ Jon Hay, *Banks Hit by 'Fraud' Complaint to SEC over Adani SLB Coal Links*, GlobalCapital (Oct. 21, 2021), <https://www.globalcapital.com/article/297sitz2boxhpl0ffm29s/sri/banks-hit-by-fraud-complaint-to-sec-over-adani-slb-coal-links>.

¹⁶ *Id.*

¹⁷ Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (2023); 17 C.F.R. § 240.10b-5 (2023); Securities Act of 1933 § 17(a)(2), 15 U.S.C. § 77q(a)(2) (2023).

Three years later, the discrepancies uncovered by the NGO were made clear. In November 2024, the SEC filed a securities fraud case against Gautam Adani and Sagar Adani based on a 2021 bond that was alleged to have covered up a bribe payment through anti-corruption compliance statements in the prospectus for Adani Green Energy's \$750 million bond issue. Further, in May 2026, without any admission of guilt, the lawsuit was settled for \$18 million.¹⁸ This is an example of fraud identified from external sources, including the NGO and a short-seller report released in January 2023,¹⁹ which do not qualify as whistleblowers discussed in this paper.

This case shows that the established US whistleblower program is primarily concerned with insider reporting and that there is an inadequate account of the role of external institutions that complement it. This is done mainly through two tenets: first, the information is not original under the Section 21(F) bounty program, since it was derived from public filings rather than non-public knowledge. *Secondly*, there is no employment relationship among the external organizations; hence, it cannot be considered for statutory protection. Also, it is essential to realize that it does not entail a reconsideration of the whistleblowing system; rather, it emphasizes the absence of an effective legal regime to identify fraud committed by external organizations in ESG and greenwashing. As a result, there is a gap in detection among those who conduct most investigations into ESG fraud in public markets. Therefore, a robust whistleblower program should run alongside a parallel reward-based recognition track that also focuses on external parties, rather than relying solely on insider reporting to ensure its effectiveness.

RETHINKING WHISTLEBLOWER PROTECTION AND CORPORATE ACCOUNTABILITY

The previous comparison shows that even when whistleblower protection is at its best, as with Dodd-Frank and SOX in the USA, the entire protection mechanism rests on the assumption that it is the employee who can blow the whistle on ESG fraud, while external agencies performing a comparable watchdog function remain outside the scope of legal recognition. As the Adani case shows, this assumption is misleading. The first author of the detection of the information gap regarding Adani Electricity's bond offer was not an employee but an external NGO, which, using public documents, identified the gap. At the same time, the entity that triggered the market investigation in 2023 was the short-selling research company. Neither

¹⁸ *Supra* note 15.

¹⁹ Hindenburg Research, *Adani Group: How the World's 3rd Richest Man Is Pulling the Largest Con in Corporate History* (Jan. 24, 2023), <https://hindenburgresearch.com/adani/>.

organization meets the SEC's "original information" criteria for whistleblower protection, nor does India have anything similar in its legislation.

This indicates two gaps that need to be addressed in reforms in this area in India and elsewhere. Firstly, the pending statutory framework in India should not replicate the US insider-centric model. If fraud based on disclosures such as greenwashing is fundamentally different from financial fraud, being more difficult to detect (for example, through auditing procedures) and more often coming to light through public document analysis or market research, then a framework focused on protecting insiders will miss some important cases of fraud. The current setup used by SEBI, which rewards whistleblowers for reporting insider trading, can serve as a guide for creating a new framework. However, the current system needs to be modified to incorporate ESG-related offenses into the framework and to add the requirement for external analysis, without necessarily changing the system's focus toward reporting insider information.

Second, even though the US system has matured, it still needs to involve accountability mechanisms, NGOs, civil society researchers, and investment analysts, whose role is not that of an insider. However, it is equally important and even more so in the Adani case, because their investigation of wrongdoing was conducted earlier than that of the official authorities involved. Indeed, the three-year gap between AFII's complaint in 2021 and the SEC's charges in 2024 shows that the detection of wrongdoing depends on external agents with no incentive to adhere to legal procedures or frameworks. However, it is ultimately the investors and communities for which ESG rules are meant that have to bear the costs of such methods. Moreover, this shows a delayed realization of corporate accountability by the concerned entities: the issue was flagged much earlier, but in the Adani case, they were held accountable much later, with a penalty far below the total value of the fraud.

The Adani case, consequently, serves more as an illustration that "whistleblower protection," as defined by current regulations in both jurisdictions, protects only the part of the ecosystem that helps detect ESG fraud. Thus, the rethinking of corporate accountability may require a rethinking of the very definition of a whistleblower.