CORPORATE CRIMINAL LIABILITY FOR AI-GENERATED GREEN WASHING IN INDIA: BRIDGING THE REGULATORY GAP

Mohd Farhan Siddiqui*

INTRODUCTION

The rapid adoption of Artificial Intelligence has fundamentally transformed the way corporations communicate with consumers investors and regulatory authorities.AI powered tools are increasingly used to prepare sustainability reports generate environmental social and governance disclosures create marketing campaigns and draft corporate communications while these technologies have improved efficiency and reduced operational costs they have also created unprecedented opportunities for corporation to exaggerate of fabricate environmental claims through AI-generated greenwashing presents a significant legal challenge particularly in jurisdictions such as India where corporate criminal liability and AI governance continue to evolve. Greenwashing traditionally refers to the practice whereby businesses mislead consumers or investors by portraying their products services or operations as environmentally sustainable despite the absence of substantive environmental benefits with generative AI such deceptive practices can now be executed at an unprecedented scale through automatically generated sustainability reports misleading carbon neutrality claims fabricated environmental statistics manipulated lifecycle assessment and AI-generated advertisements that create a false perception of corporate environmental responsibility consequently AI has transformed greenwashing from isolated marketing misconduct into a sophisticated technological risk capable of influencing consumer choices investment decisions and public policy. India has made considerable progress in regulating environmental disclosures through the Company Act 2013,[1] the Consumer Protection Act, 2019,[2] the Environment Protection Act 1986, SEBI's

*BA LLB, FIRST YEAR, RIZVI LAW COLLEGE.

[1] Company Act 2013.

[2] Consumer Protection Act 2019.

business responsibility and sustainability reporting [BRSR][3] framework and central consumer protection authority guidelines for prevention and regulation of greenwashing [2024].

Nevertheless, these laws primarily regulate misleading claims made by corporations without addressing the unique legal complexities arising when such claims are autonomously generated or substantially assisted by AI systems. Questions concerning attributes of criminal intent [Mens rea], allocations of responsibility among corporate directors, AI developers, software vendors and compliance officers and the evidentiary standards applicable to AI-generated content remain largely unresolved.

Supreme Court of India has recognised the principle of corporate criminal liability in Standard Chartered Bank v. Motorola Inc[4]., holding that corporations may be prosecuted for offences requiring criminal intent through the doctrine of attribution; however, these decisions predate the emergence of advanced generative AI and therefore offer limited guidance on determining criminal liability where deceptive environmental representation originates from autonomous or semi-autonomous AI systems rather than direct human decision-making.

Internationally jurisdiction such as the European union and the united states have begun developing regulatory frameworks governing AI and ESG disclosures .instruments including the European union AI act the corporate sustainability reporting directive [CSRD][5] and the federal trade commissions green guides recognises the growing need for accountability in AI-assisted corporate communications India however lacks a comprehensive statutory framework specifically addressing AI-generated greenwashing or establishing criminal liability standards for criminal deploying AI systems in sustainability reporting.

CONCEPT OF AI-GENERATED GREENWASHING

Recent research and changes in regulations show that the combination of artificial intelligence and environmental marketing has created major legal and governance challenges. Delmas and Burbano, in their seminal article The Drivers of Greenwashing, identify a mix of external marketing pressure, consumer demand for sustainable products, regulatory uncertainty and internal corporate incentives[6]. They argue that organisations may exaggerate environmental

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[3] Business Responsibility and Sustainability Reporting [BRSR].
[4] Charter Bank V. Motorola Inc .
[5] Corporate sustainability Reporting Directives [CSRD].
[6] The Drivers of Greenwashing results from a mix of external marketing pressure consumer demand for sustainable products regulatory uncertainty and internal corporate incentives

performance to secure competitive advantages even when genuine sustainability measures are lacking. Although their work predates the widespread use of generative AI, its analysis remains highly relevant because artificial intelligence has amplified the ability of corporations to produce persuasive sustainability communications quickly and at scale. AI-powered tools can now generate Environmental, Social, and Governance (ESG) reports, advertising website content and investor disclosures, increasing both the efficiency of corporate communication and the risk of disseminating inaccurate or misleading environmental claims.

Recognising the transformative impact of AI, the Organisation for Economic Co-operation and Development [OECD][7] adopted the recommendation of the recommendation of the council on Artificial Intelligence [2019], which establishes internationally recognised principles for trustworthy AI. These principles are particularly relevant to corporate sustainability reporting because businesses deploying AI remain responsible for ensuring that algorithmically generated content is accurate, verifiable and compliant with applicable legal obligations. The OECD framework therefore rejects the notion that corporations can evade responsibility by attributing misleading environmental statements solely to autonomous AI systems.

India has started to improve its response to misleading environmental claims through the Central Consumer Protection Authority [CCPA][8]guidelines for prevention and regulation of greenwashing 2024. These guidelines ban vague, exaggerated or unsupported environmental statements. They require businesses to back up their sustainability claims with credible evidence. Their goal is to protect consumers from misleading marketing and to encourage more transparency in environmental advertising. However, the guidelines don’t specifically deal with cases where misleading claims are created or significantly aided by artificial intelligence. This leaves uncertainty about who is legally responsible: the corporation directors or AI service providers.

On the international stage, the European Union Artificial Intelligence Act [Regulation [EU] 2024/1689][9] is one of the most thorough legal frameworks for AI. The Act takes a risk-based approach and sets rules for governance, documentation, transparency, risk management and human oversight of AI systems. While it doesn’t focus solely on greenwashing, its focus on accountability and traceability provides useful guidance for regulating AI-aided sustainability

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[7] Organisation for Economic Co-operation and development [OECD]
[8] Central consumer protection authority [CCPA]
[9] European union Artificial Intelligence Act [Regulation [EU] 2024/1689]

reporting. Together, these academic and regulatory advancements show that while current legal frameworks acknowledge the risks linked to misleading environmental claims and AI governance separately, there is a major gap when it comes to how AI can be used to generate or support greenwashing. Filling this gap is crucial for ensuring corporate responsibility, protecting consumers and investors and maintaining the integrity of environmental governance.

Consequently, AI-greenwashing is a novel form of corporate crime that takes place at the intersection of corporate criminal law and artificial intelligence technologies. The surge of AI in ESG reporting and green rhetoric requires India to review and update its legal framework, which was designed to regulate human-driven greenwashing practices, to account for unique challenges posed by AI-driven approaches. This would involve clarifying the concepts of AI-generated greenwashing, establishing the principles of corporate criminal liability in such cases, ensuring human oversight in AI-driven ESG disclosure and preventing negative environmental and socioeconomic impacts caused by the utilisation of AI in ESG reporting and disclosures.

CORPORATE CRIMINAL LIABILITY UNDER INDIAN LAW

Corporate criminal liability is a recognised concept in Indian law that acknowledges the possibility for a corporation to be charged and punished for crimes to be charged and punished for crimes that are committed by its directing minds and will. Although the criminal liability of an individual has long been a part of Indian jurisprudence, corporate criminal liability came into prominence through judicial interpretation. The basic rationale for recognising corporate criminal liability rests on the fact that crimes committed by corporate criminal liability came into prominence through judicial interpretation. The basic rationale for recognizing corporate criminal liability rest on the fact that crimes committed by corporations have a direct impact on the fact that crimes committed by corporations have a direct impact on the public at large. Although corporations are artificial juridical persons, they must answer for the crimes committed by their directors and officers who represent their directing minds and wills. Indian courts have laid down a comprehensive set of guidelines to determine the criminal liability of corporations, which has significant relevance in the case of AI-generated greenwashing.

One of the earliest cases to acknowledge corporate criminal liability in India is the case of Standard Chartered Bank v. Directorate of Enforcement, [2005] 4 SCC 530[10]. This case laid

[10] Standard Chartered Bank v Directorate of enforcement, [2005] 4 SCC 530

down several important principles in relation to the criminal liability of corporations. The Supreme Court of India held that a corporation may be prosecuted for the crime even if the statute mandates a penalty that includes a term of imprisonment in addition to a fine, since the doctrine of vicarious liability could be applied to a corporation. Furthermore, where a statute specifically provides for imprisonment in addition to the fine, the court could disregard the imprisonment component if it was incapable of being imposed on the corporation. By this decision, the Supreme Court of India took a firm stance against corporate criminal misconduct. The principles articulated by the court in Standard Chartered Bank could be used to hold such corporations accountable for their actions.

Iridium India Telecom Ltd. v Motorola Inc.[11], the Supreme Court of India took a detailed look at the concept of corporate mens rea. The Court held that by virtue of the doctrine of attribution, a corporation is capable of committing a crime with criminal intentions. Since corporations are artificial persons, they cannot have criminal intentions as such, the Supreme Court held that the mens rea of a corporation consists in the mens rea of those who exercise control over it. This means that a corporation can be held guilty of a crime such as cheating and criminal conspiracy if the criminal intentions of its directors and officers could be attributed to it. With respect to the issue of AI-generated greenwashing Iridium Telecom is directly is applicable since corporations are likely to rely on criminal intentions of their directors and officers while deploying AI to make false environmental claims For example, if the directors or officers while deploying AI to make false environmental claims. for example if the directors officers of the corporations have actual or constructive knowledge that a particular AI software that generates sustainability claims is capable of making false or misleading claims that generates sustainability related claim is capable of making false or misleading claims then they would be directly criminally liable for their actions. The corporation itself may also be held criminally liable for having relied on the criminal intentions of its directors and officers to generate false sustainability claims.

Mihir Naniwadekar and Umakanth Varottil have noted that the decision in Iridium India Telecom marks a turning point in Indian corporate law by formally adopting the principle of corporate mens rea. Furthermore, they observed that Iridium India Telecom brings to light the need for clarifying legislation in relation to the principle of vicarious liability.

[11] Iridium India Telecom Ltd. v Motorola Inc. [2011] 1 SCC 74

It must also be noted that The Supreme Court of India has laid down various principles governing corporate criminal liability in connection with environmental protection in particular the supreme court of India has held that corporations may be held liable for causing environmental damage even if it does not have any intentions cause such damage this principle is known as absolute liability The Supreme Court of India has held that absolute liability applies to any industry in which employs any activity that may cause a environmental hazard apart from the principle of absolute liability. Apart from the principle of absolute liability, the Supreme Court has held that sustainable development and the principle of the polluter pays principle must be followed by all corporations while discharging their duties and responsibilities as per the law.

Though none of the judicial pronouncements in the case of MC Mehta v. Union of India,[12] Vellore Citizens Welfare Forum v Union of India,[13] and Indian Council for Enviro-Legal Action v Union of India[14] have addressed the issue of AI-generated greenwashing, they do indicate that the Indian judiciary has no hesitation in imposing stringent obligations on corporations that cause environmental damage. In fact, this line of judgement indicates that the Indian judiciary has adopted a firm stance against green washing maybe used to impose criminal liability on corporations that employ AI to engage in any kind of greenwashing. In particular, the judiciary may use the doctrine of absolute liability to hold such corporations criminally liable for failure to comply with environmental laws. However, it must also be noted that none of these judgements explicitly address the issue of AI-generated greenwashing, and as such, the judicial precedents on this issue may be used to impose corporate criminal liability for AI-generated greenwashing. Nevertheless, the less The Supreme Court may also have to lay down specific guidelines pertaining to corporate criminal liability for AI-generated greenwashing.

Numerous commentators have discussed the issue of corporate criminal liability in connection with greenwashing. In particular, Magali A. Delmas and Venessa Cuerel Burbano have written extensively on greenwashing in the California Management Review. In particular, many commentators have opined that corporate criminal liability in connection with greenwashing is

[12] MC Mehta v. union of India
[13] Vellore Citizens Welfare Forum v. Union of India
[14] Indian Council for Enviro-Legal Action v. Union of India

still an emerging area of Indian law, and it is necessary to examine to what extent the principle of vicarious liability can be applied to AI-generated greenwashing.

REGULATORY GAPS IN INDIA REGARDING GREENWASHING-AI

While India has several laws that govern corporate conduct, consumer rights, and environmental protection, none of them explicitly address the issue of AI-generated greenwashing and define the corresponding responsibilities for corporations. In particular the Companies Act 2013 the Consumer Protection Act 2019 the Environment Protection Act, 1986, and the central consumer protection Authority [CCPA][15] guidelines for prevention and regulations of Greenwashing 2024 prohibit fraudulent misleading advertising and false environment claims but do not mention AI-driven deception and responsibility gaps in case of such misconduct for this reason legal scholar noted a dearth of AI-specific laws in India which rely too heavily on existing but insufficient legislation.

One of the key challenges in regulating AI lies in establishing the mens rea of corporations that use such technologies to commit crimes. According to the Supreme Court ruling in Iridium India Telecom v. Motorola Inc .2011 1 SCC74 [16]can be held liable based on the directing minds and will, meaning that a corporate entity can be prosecuted through its human agents. While this ruling is useful in cases where humans give direct orders, such a formulation may be insufficient in situations where misleading information originates from AI. For examples. The ruling in Standard Chartered Bank v. Directorate of Enforcement allows prosecuting corporations for criminal acts, including those committed by AI agents. However, neither ruling explicitly states whether corporate directors can be accused of criminal negligence if they rely on AI-driven reports that turn out to be false.

Another problem stems from the absence of specific requirements for AI-driven transparency audit trails and human oversight in India. Unlike the EU AI Act, which requires implementing various proportionate safeguards depending on the risk level of the given AI application, India does not legally require corporations to document technical processes, conduct algorithmic audits or report the use of AI in preparing ESG reports and other types of environmental advertising. As a result, law enforcement might struggle to differentiate between negligent, intentional and algorithmic errors in proving criminal intent. It is recommended to supplement

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[15] Environment Protection Act , 1986,and the central consumer protection Authority [CCPA]
[16] Iridium India Telecom v. Motorola Inc 2011 1 SCC74

the existing legislation with new rules that impose certain limitations, obligations and criminal penalties on businesses that fail to meet specific AI-related standards.

CONCLUSION

The Rising use of artificial intelligence in corporate sustainability reporting and environmental marketing practices raises serious questions about the efficiency of India's current legal framework in regulating deceptive practices and holding firms accountable for false information and greenwashing. Although the Companies Act 2013, the Consumer Protection Act 2019, the Environment [protection] Act 1986 and the Companies Competition and Consumer Protection Authority guidelines on greenwashing indirectly apply to AI's use in deceptive corporate sustainability reporting, they lack specific provisions criminalising AI-generated misinformation and outlining corporate criminal liability. Legislature must intervene to prevent unregulated use of AI in ESG disclosure practices and corporate communication to ensure that technological innovations complement efforts to promote environmental and social governance without undermining the credibility of corporations. India must have developed AI-specific legal provisions to govern firms' use of AI in their ESG disclosure practices and hold company officials accountable for using unproven, unreviewed algorithms to generate misleading information about their environmental and social performance.

Ultimately, corporate criminal law doctrines on vicarious liability and corporate responsibility provide a theoretical foundation for ensuring corporate accountability for AI-generated ESG disclosure misinformation. Cases such as Standard Chartered Bank v. Directorate of Enforcement and Iridium India Telecom Ltd v Motorola Inc. illustrate the judiciary's willingness to employ existing laws to penalise companies for failing to ensure that their directors and officers act ethically and lawfully. India's lawmakers must intervene to ensure that AI-generated environmental and social governance disclosures and corporate marketing practices do not create a loophole for firms to evade their vicarious liability for the actions of their employees and directors while emphasising corporate criminal law doctrines and principles of corporate accountability and environmental protection.