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ARTIFICIAL CLAIMS, REAL LIABILITY: REGULATING AI WASHING THROUGH INDIA'S CORPORATE DISCLOSURE FRAMEWORK

AUTHORED BY - SUJOY GOSWAMI
Designation of Author: 4th Year B.A.LL.B (H)
Name of the organization for Author: Amity University Kolkata.

Abstract

The present-day capital market is awash with assertions relating to artificial intelligence. Issuers, listed firms, investment advisers and firms catering to consumers regularly assert themselves to be "AI-powered," "AI-driven" or "AI-first," usually in filings and offering documents that raise capital and manage investor expectations. When such assertions exceed the actual technological state of things, the phenomenon has a name"AI washing"and, with the first enforcement action by the US Securities and Exchange Commission in March 2024, a legal consequence. The Indian legislative corpus does not contain any specific law governing AI washing, and the prevailing academic view is that the absence of law provides a shield for the boasting firm. This article challenges the above academic view. It makes the argument that the extant law of corporate disclosures in India the misrepresentation, fraud and duties of directors' provisions in the Companies Act, 2013, the anti-fraud and disclosure laws in the SEBI Act, 1992 and the rules made under it, and the misleading advertisements law in the Consumer Protection Act, 2019. Thus there already exists an implicit yet effective regime against AI washing. Leveraging the enforcement strategy of the SEC, the transparency framework of the Artificial Intelligence Act of the European Union, and the 2024 anti-greenwashing guideline of the Central Consumer Protection Authority as a domestic legal precedent, this article outlines how fictitious representations can be transformed into liability based on existing Indian law. Subsequently, it examines the structural limitations of the implicit regime in determinacy of materiality in technological representations, the lack of legal definition of "AI", the puffery doctrine, and a disclosure framework that favors listed companiesand presents a targeted, hierarchical approach to address thema disclosure circular issued by SEBI with regard to AI-related representations, an anti-AI claim guideline issued by CCPA, and the on-demand substantiation requirement. The premise is that India does not need

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an AI legislation to regulate AI washing; all it needs is the calibration of its existing disclosure instruments.

Keywords: AI-powered, AI washing, Companies Act 2013, Central Consumer Protection Authority, Disclosure.

I. Introduction

Hardly an acronym has jumped the fence from the lab into the prospectus more quickly than "AI." Within the course of just one market cycle, artificial intelligence has moved from being an engineering term to becoming a marketing term signifying the modernity, scalability, and premium valuation of whatever is offered something which companies and their advisors have powerful incentives to communicate and much weaker incentives to confirm. This has led to what is now commonly known as "AI washing," where there are deliberate and misleading claims made about artificial intelligence in a product or firm for purposes of gaining an advantage.[1]This word was chosen intentionally to echo "green washing," and the comparison is enlightening because in both cases what is done is an appropriation of a socially virtuous principle that of environmental responsibility on one hand, and of technological sophistication on the other.[2]

In essence, the main tension that this paper explores is a structural disparity between the speed of representation regarding AI technology on the one hand and the sluggishness of regulatory reaction to it on the other hand. What is meant by that? First of all, the existence of a situation when any mention of "machine learning" or "generative AI" can make an impact on valuation, affect a decision whether to subscribe or not or at least distinguish an offering from its commodity. Second, there is no provision in the legislation of many countries that would include the notion of "AI washing." Intuitive conclusion drawn from that seems quite obvious namely, that any activity not named in the statute is free from being regulated by law. This assumption proved false by the example of the United States Securities and Exchange Commission ("SEC") in March 2024. In particular, the SEC settled the first enforcement action related to AI washing against two investment advisers, Delphia (USA) Inc. and Global

[1] On the coinage and scope of the term, see 'AI Washing' Meets Marketing Rule, as SEC Fines Two Advisers for Their AI Claims, Thomson Reuters Inst. (Mar. 26, 2024), https://www.thomsonreuters.com/en/institute/articles/ai-washing-enforcement.

[2] See Securities and Exchange Commission Brings First Enforcement Actions Over "AI-Washing," Mayer Brown (Apr. 15, 2024) (observing that "[w]hether it is AI-washing, green-washing or quant-washing, the regulatory message is the same—say what you do and do what you say").

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Predictions, Inc. but under what regulation?[3]The key here is as straightforward as the then-SEC chair noted: Do not try to 'greenwash' or try to 'AI wash.' A company has to "say what [it does] and do what [it says]."[4]

The issue finds special relevance in the Indian situation as well. India is home to one of the world's biggest and most rapidly growing technology and start-up ecosystems; its capital markets are deep and largely retail, but increasingly serviced by algorithms; and its regulatory authorities have had to contend, in the context of sustainability, with the related challenge of greenwashing. Yet, there is no specific AI legislation in India, and the governance tools developed so far have mostly taken the form of advisories issued by the Ministry of Electronics & IT ("MeitY") and the non-binding India AI Governance Guidelines issued in November 2025.[5]It is therefore not surprising to find that the predominant view of AI washing is that it "lands in a grey area" in the law of India."[6]

This paper sets out a contrary proposition. In doing so, it posits that India's regime for corporate disclosure is already an extant anti-AI-washing regime; one that can be understood to include a regime for liability of misstatement, prohibitions of fraud, disclosures requirements, and a fiduciary duty that when understood correctly transforms mere claims of artificial intelligence into real liability without the requirement of any new legislation. Not that such a regime is adequate but that it is doctrinally available and under-utilized; and that regulation, if required, lies in calibration rather than creation. The argument proceeds through six main points. Part II defines AI washing, differentiates it from commercial puffery that is lawful, and places it within the doctrine of material misrepresentations. Part III considers the U.S. enforcement template where the extant securities law has been turned against AI washing and extracts the applicable doctrine.The EU Artificial Intelligence Act and other UK laws relating to AI are discussed in Part IV, and they take a route of ex ante transparency and proof instead of ex post anti-fraud rules. In Part V, the main doctrinal exercise of the paper is undertaken, by tracing out how the Companies Act of 2013, the SEBI Act of 1992 and its subordinate legislation, and the

[3] Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence, No. 2024-36 (Mar. 18, 2024), https://www.sec.gov/newsroom/press-releases/2024-36; see Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 to 80b-21.

[4] See Press Release, supra note 3 (statement of Chair Gary Gensler); see also Gary Gensler, Chair, U.S. Sec. & Exch. Comm'n, Remarks before Yale Law School (Feb. 2024) (warning that "one shouldn't greenwash, and one shouldn't AI wash").

[5] See Ministry of Electronics & Info. Tech., Gov't of India, India AI Governance Guidelines (Nov. 5, 2025); Advisory No. 2(4)/2023-CyberLaws-3, Ministry of Electronics & Info. Tech. (Mar. 15, 2024) (revised AI advisory to intermediaries and platforms).

[6] See AI Washing: Regulatory Gaps and Risks in This Booming Market, TCCLR (observing that exaggerated AI claims "typically fall[] into a grey area" under Indian law).

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Consumer Protection Act of 2019 fit into an AI-washing doctrine, by using the anti-greenwashing guidelines of the Central Consumer Protection Authority of 2024 as a domestic precedent for sectoral legislation. The constraints inherent in this regime are identified in Part VI. Part VII suggests a calibrated reform.

II. Conceptualising AI Washing: From Puffery to Material Misrepresentation

A coherent regulatory response presupposes a coherent definition, but AI washing is hard to define because it exists on a spectrum. On one end is the purest form of deception: the company that claims an AI capability that it doesn't actually have, where, for example, "expert AI-driven forecasts" are generated through methods that have nothing to do with artificial intelligence. On the other end is typical business enthusiasm for products that are actually adjacent to AI. In between are cases which are harder to define analytically: capability inflation, where statistical or rule-based software is marketed under the guise of machine learning; provenance laundering, where externally sourced AI models are presented as original innovations; autonomy exaggeration, where human-in-the-loop processes are portrayed as autonomous AI; and definitional opportunism, where the flexible term "AI-powered" is applied to software that no computer scientist would identify as AI.[7]This means that the definition will not only have to be practical but not taxonomical, and so "AI washing" can be defined as "the production of a representation about artificial intelligence that is inaccurate or misleading in an aspect that any reasonable investor or consumer would consider significant and that the representor cannot substantiate.[8]

It is the "materiality" modifier that plays the crucial role here since it sets the line between misrepresentations and acceptable puffery. Neither English-American nor Indian law can hold an entity liable for optimistic statements where there is no reason for a reasonable person to rely on them.[9]Materiality standard as put forward in the United States by a substantial likelihood of a reasonable investor viewing the statement to be significant in determining how to proceed, and whose revelation would alter the total mix of information provided, forms the

[7] For a taxonomy of AI-washing variants, see generally AI Washing, supra note 6; see also Mayer Brown, supra note 2.
[8] This functional definition adapts the materiality test discussed infra notes 11–13. See also SEC Enforcement Actions Signal Enhanced Scrutiny Around "AI Washing," Crowell & Moring LLP (May 13, 2024).
[9] On the exclusion of puffery from misrepresentation liability, see, e.g., TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 448–50 (1976).

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filter.[10]While a slogan that the company is "embracing the AI revolution" can be considered puffery, a representation that the company's investment algorithm "incorporates machine learning that processes client data" is a statement of fact that could potentially be proven to be false.[11]For this reason, the regulatory problem of AI washing is not one of conceptual originality but of evidence and interpretation: discerning where a technological claim moves from exhortation to fact, and whether that technological fact is material to the relevant audience.[12]

There are two ways by which AI washing differs from its predecessor greenwashing, thereby increasing the saliency of the disclosures. The first difference is that the AI claim is often intrinsic to valuation, whereas an environmental claim made in greenwashing is usually extraneous to the process of valuation. For example, the claim of being AI-driven can form the thesis itself for some firms.[13]Second, the epistemic opacity of AI capacity in contrast to the environment is one that the investor cannot easily inspect as she could with an emissions report; it relies almost entirely on the description provided by the issuer.[14]It is because of this combination of high dependence and low verifiability that constitutes the classical predicate for disclosure regulation, and therefore the phenomenon of AI washing is best dealt with by the set of laws that already regulate corporate disclosure.[15]

III. The United States Template: Turning Subsisting Securities Law Against AI Washing

A good example of how an organization can punish AI washing without legislating on it is in the United States. The SEC made charges on 18 March 2024 against two investment advisors who had been engaging in making false and misleading representations concerning the use of artificial intelligence technology. This was the first case of AI washing that the SEC had dealt with.[16]In the case of Delphia (USA) Inc., the Commission determined that the advisor in

[10] Basic Inc. v. Levinson, 485 U.S. 224, 231–32 (1988) (adopting the "substantial likelihood" and "total mix" formulation of materiality from TSC Industries).
[11] Cf. Press Release, supra note 3 (characterising as actionable Delphia's specific representations regarding machine-learning processing of client data).
[12] See Crowell & Moring LLP, supra note 9 (noting that the materiality of AI representations turns on their capacity to influence an investor's decision).
[13] See Mayer Brown, supra note 2 (noting the heightened regulatory interest where AI claims are central to a "robo" advisory service marketed to retail clients).
[14] On the reliance-and-verifiability asymmetry characteristic of disclosure regulation, see generally Basic, 485 U.S. at 234.
[15] Cf. Companies Act, 2013, No. 18 of 2013, § 35 (India) (civil liability for misstatements predicated on investor reliance).
[16] Press Release, supra note 3; see SEC Cracks Down on "AI Washing," Kohrman Jackson & Krantz (May 8, 2024).

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Toronto had been representing in its filing, press release and on its website for many years that it uses artificial intelligence and machine learning in analyzing data for investment purposes when it actually didn't have the technology it claims to have.[17]In the related case of Global Predictions, Inc., the Commission determined that the adviser from San Francisco had represented itself to be the "first regulated AI financial advisor," which was false, and also that its platform delivered "expert AI-driven forecasts."[18]Neither of the advisers acknowledged or contested the findings; Delphia agreed to pay a civil fine of US$225,000, while Global Predictions paid US$175,000, and both were reprimanded.[19]

The most significant characteristic about these cases is the doctrinal foundation behind them. They were not charged based on an instrument specifically designed to address issues relating to AI but rather the anti-fraud provisions of the Investment Advisers Act of 1940, particularly the Marketing Rule of the Commission, which provides that an adviser may not distribute advertisements including false statements of material fact.[20]Furthermore, the commission found that both the advisers failed to implement compliance procedures reasonably calculated to forestall the making of such misrepresentationsthe responsibility not being merely for the false statement but for the failure in governance that made it possible.[21]Assumption of materiality was made in relation to the representations instead of its litigation because, as per the well-settled principle, it is material to a reasonable investor in making a selection of an advisor whether there exists or does not exist an actual AI capacity.[22]It was clear that the motivating idea was connected directly to the concept of the law of greenwashing whether we are speaking about environmental, quantitative, or algorithmic mislabeling, the rule was always the same the issuer has to be transparent about its activities.[23]

There are three lessons applicable in the Indian context. First, the "no dedicated statute" argument is a non-sequitur because general misrepresentation and anti-fraud laws, which have been drafted technology-neutrally, are intended to capture new forms of material

[17] See Press Release, supra note 3; Delphia (USA) Inc., SEC Order Instituting Admin. & Cease-and-Desist Proceedings (Mar. 18, 2024).
[18] See Press Release, supra note 3; Global Predictions, Inc., SEC Order Instituting Admin. & Cease-and-Desist Proceedings (Mar. 18, 2024).
[19] See Press Release, supra note 3; see also Mayer Brown, supra note 2 (civil penalties of US$225,000 and US$175,000 respectively).
[20] Investment Advisers Act of 1940, 15 U.S.C. § 80b-6(4); 17 C.F.R. § 275.206(4)-1 (Marketing Rule); see Crowell & Moring LLP, supra note 9.
[21] See Baker McKenzie, Recent SEC Actions Highlight Increased Regulatory Scrutiny Over Artificial Intelligence and "AI Washing" (Apr. 4, 2024) (noting the advisers' failure to adopt policies reasonably designed to prevent the violations).
[22] See Basic, 485 U.S. at 231–32; Crowell & Moring LLP, supra note 9.
[23] Mayer Brown, supra note 2.

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misrepresentations, including AI washing.[24]Secondly, enforcement applies equally to the structure of compliance as to the misstatement itself, implying that the directorial and governance responsibilities at the heart of Indian company law constitute a logical place to locate AI-washing liability.[25]Third, the SEC combined the use of enforcement with an investor alert campaign on the one hand and leadership statements on the other that material misrepresentations in the use of AI will not be tolerated, thus creating an interpretive expectation in the absence of a rule. Such a combination of enforcement and interpretive guidance is what Indian regulators can do under the current regime.[26]

IV. The European and United Kingdom Approaches: Ex Ante Transparency and Substantiation

While the US government reacts after the fact, the European Union prevents AI washing before the fact. The AI Act (Regulation (EU) 2024/1689) became applicable on 1 August 2024 and established risk tiers for AI systems.[27]Its transparency obligations under Article 50 apply as of 2 August 2026 and include informing persons when interacting with an AI system and marking generated content,[28]and risky systems fall under the documentation and traceability requirements of Article 13.[29]The net result is a necessity for accuracy regarding AI in its implementation phase.[30]

The framework of substantiation from environmental claims regulation adds another dimension to this framework. UK's Green Claims Code and the codes by Advertising Standards Authority need capability claims to be honest, clear, and substantiable.[31]Such responsibility, on the part of the person who makes the virtue claim, is not dependent on technology and shifts from "green" to "AI."[32]Here lie two postures together: substantiation ex ante and liability ex post, which, as argued in Part VII, can be combined by India.[33]

[24] Cf. 15 U.S.C. §§ 80b-6, 80b-6(4); see supra note 2 and accompanying text.
[25] See Baker McKenzie, supra note 22; infra Part V.A (directorial duty of care under Companies Act § 166(3)).
[26] See infra Part VII.
[27] Regulation 2024/1689, of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence, 2024 O.J. (L, 2024/1689) 1 [hereinafter AI Act].
[28] Id. art. 50; see Guidelines on the Implementation of the Transparency Obligations for Certain AI Systems Under Article 50 of Regulation (EU) 2024/1689, C(2026) 5054 final (July 20, 2026) (transparency obligations applicable from Aug. 2, 2026).
[29] AI Act, supra note 29, art. 13; see id. recitals 132–135.
[30] Cf. id. art. 50 (requiring disclosure of AI interaction and marking of synthetic content).
[31] See Competition & Mkts. Auth. (U.K.), Green Claims Code (2021); Advertising Standards Auth. (U.K.), CAP Code (misleading advertising).
[32] On the technology-agnostic character of the substantiation burden, see id.; cf. AI Act, supra note 29, art. 50.
[33] See infra Part VII.

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V. India's Corporate Disclosure Architecture as a Latent Anti-AI-Washing Regime

The thesis of this paper is that there are sufficient provisions in Indian law that will enable an AI-washing claim to be converted into liability in three separate areas of law – the Companies Act, 2013, the SEBI framework for regulating securities and the Consumer Protection Act, 2019.[34]

A. The Companies Act, 2013: Misstatement, Fraud and the Director's Duty of Care

Provisions of The Companies Act 2013 regulate representations in the issue of capital. Sections 34 and 35 make criminal and civil liabilities in case of false or misleading statement in prospectus, including material omission, for directors and promoters.[35]If a company says in its prospectus that it is an "AI-driven technology," then this clearly falls under their mischief; there is nothing limiting them to misleading financial statements.[36]Section 36 makes liable anyone who commits fraud by making knowingly false representations to induce investments.[37]

General Provisions of the Act provide liability in a technology neutral fashion. Section 447 criminalizes "fraud," broadly defined, and does not pertain only to accounting fraud.[38]Section 448 punishes false statements in all documents required under the Act, thus taking care of AI falsehoods in documents.[39] Section 129 and 134 mandate that the financial statements provide a true and fair view and a directors' responsibility statement confirming the same.[40]The existence of an artificial intelligence-based misrepresentation may have an impact on the "true and fair" view of the signatories.[41]

The most important is the codified fiduciary duty. Section 166(3) stipulates that every director is obligated to exercise due care, skill and diligence, and Section 166(2) to act in good faith for the members.[42]Any director allowing materially false statements about AI violates the above benchmark, similar to how governance failure was argued by SEC in Delphia and Global

[34] See Companies Act, 2013, No. 18 of 2013 (India); Securities and Exchange Board of India Act, 1992, No. 15 of 1992 (India); Consumer Protection Act, 2019, No. 35 of 2019 (India).
[35] Companies Act, 2013, §§ 34–35 (India).
[36] See id. § 34 (criminal liability for untrue or misleading statements in a prospectus, including omissions of material matter).
[37] Id. § 36 (punishment for fraudulently inducing persons to invest money).
[38] Id. § 447 (punishment for fraud); see id. § 447 expl. (defining "fraud" to include any act, omission, concealment or abuse of position done with intent to deceive or to gain undue advantage).
[39] Id. § 448 (punishment for false statements).
[40] Id. §§ 129(1), 134(3)–(5).
[41] See id. § 129(1) (requirement that financial statements give a true and fair view).
[42] Id. § 166(2)–(3).

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Predictions cases.[43]In the case of N. Narayanan vs Adjudicating Officer, SEBI, the Supreme Court ruled that people in charge cannot avoid liability for misleading statements made by the company.[44]Section 166(3) therefore makes director's liability independent of securities law.[45]

B. The SEBI Act, 1992 and Subordinate Regulations: Fraud, Disclosure and the Adviser

As far as listed bodies and intermediaries are concerned, SEBI Act 1992 is one of the most powerful latent instruments. Under section 11(1), SEBI is entrusted with safeguarding the interests of the investors. Under Section 11(1)(a), SEBI is empowered to prohibit use of unfair practices in raising funds.[46] Section 12A prohibits any manipulative or deceptive device in dealing in securities.[47]PFUTP Regulations, 2003 include content as well: Regulation 3 prohibits fraudulent dealing, while Regulation 4 identifies the unfair practices, such as material misstatements which may influence investment decision.[48]Misrepresentation of a listed company's capabilities when using artificial intelligence is clearly covered by Regulation 4.[49]

This is further reinforced by the regime of continuous disclosures. Section 4(1)(c) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") stipulates that each listed company shall make sure that its information does not create any misguidance.[50]Regulation 30, in combination with Schedule III, demands material information be made public, hence, the need to determine (Part VI) whether there is a requirement to disclose any change in AI capability.[51]SEBI's Circular of February 2023 on Green Debt Instruments has already covered materially misleading sustainability claims within its ambit of fraud.[52] The distance from greenwashing to AI washing is short.[53]

The SEBI Investment Advisers Regulations, 2013 regulate those who were penalized by the SEC in 2024. Under Regulation 28, there is a Code of Conduct that demands honesty and

[43] See id. § 166(3); cf. Baker McKenzie, supra note 22 (governance-failure theory in the Delphia and Global Predictions orders).
[44] N. Narayanan v. Adjudicating Officer, SEBI, (2013) 12 S.C.C. 152 (India).
[45] See id.; Companies Act, 2013, § 166(3) (India).
[46] Securities and Exchange Board of India Act, 1992, § 11(1), (1)(a) (India).
[47] Id. § 12A.
[48] SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, regs. 3–4 (India).
[49] See id. reg. 4(2); cf. Mayer Brown, supra note 2.
[50] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 4(1)(c) (India).
[51] Id. reg. 30 & sched. III; see infra Part VI.
[52] See Circular, SEBI, Dos and Don'ts Relating to Green Debt Securities to Avoid Occurrences of Greenwashing (Feb. 3, 2023); Greenwashing as Corporate Misrepresentation: Analysing the Emerging Regulatory Framework in India, Fox Mandal & Assocs. (2024).
[53] See Fox Mandal, supra note 54 (materially misleading sustainability statements engage LODR reg. 4(1)(c) and the PFUTP Regulations).

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prohibits misleading or false information.[54]A false claim by an Indian robo-adviser about its advanced algorithms would violate both.[55]Proving intent is not even necessary since the Supreme Court has ruled that intent to defraud may be presumed based on circumstantial evidence as long as it is more probable than not. Hence, the consistent use of AI that cannot prove its capabilities is grounds for fraud.[56] The evidentiary posture thus suits AI washing, where the gap is provable by inference.[57]

C. The Consumer Protection Act, 2019: Misleading Advertisements and the CCPA

Many instances of AI washing involve customers through advertisements claiming that their services have been enabled by "AI." For such cases, the Consumer Protection Act, 2019 comes into play. The definition of "misleading advertisement" under Section 2(28) states that it includes advertisements making a false claim about any product or offering a false guarantee.[58]The Act creates the Central Consumer Protection Authority ("CCPA"), which has powers of investigation and penalty under Sections 18 and 21, while Section 89 relates to false advertisements.[59] A claim that a product is "AI-powered" when it embeds no AI is actionable by the CCPA.[60]

Decisively, the CCPA has shown both will and mechanism against a structurally identical claim. On 15 October 2024 it notified the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024the first dedicated anti-greenwashing instrument by an Indian statutory regulator—requiring environmental claims to be substantiated and free of unverifiable terms.[61]Their burden to prove requirement and placing of the onus on the claimant mirrors the situation for AI claims almost word for word. The fact that CCPA can issue an analogous instrument for AI under its current powers provides concrete evidence of the thesis: calibration, not legislative gap.[62]

[54] SEBI (Investment Advisers) Regulations, 2013, reg. 28 & sched. III (India) (code of conduct).
[55] Cf. Press Release, supra note 3 (robo-advisory misrepresentation of AI capability).
[56] See SEBI v. Kishore R. Ajmera, (2016) 6 S.C.C. 368 (India) (fraud may be inferred on a preponderance of probabilities from surrounding circumstances).
[57] See id.; cf. AI Washing, supra note 6 (noting the inferential gap between claim and capability).
[58] Consumer Protection Act, 2019, No. 35 of 2019, § 2(28) (India).
[59] Id. §§ 18, 21, 89.
[60] See id. § 2(28); cf. AI Washing, supra note 6.
[61] Cent. Consumer Prot. Auth., Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 (Oct. 15, 2024); see Fox Mandal, supra note 54.
[62] See infra Part VII.

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VI. The Enforcement Gap: Why Latent Doctrine Is Not Yet Sufficient

Just because Indian law has the ability to control AI laundering does not imply that it accomplishes that task effectively. Four key weaknesses constrain the regime.[63]First is the issue of indeterminacy regarding materiality, whereby there has been no Indian regulator yet to confirm the materiality of any claim regarding AI capability, and issuers will claim that they are aspirational..[64] The absence of precedent chills enforcement.[65]

The second one is definitional. Indian laws do not define "artificial intelligence" or "AI-powered," while the MeitY advisories and 2025 governance guidelines, targeting intermediary safety, provide nothing useful in terms of disclosure requirements.[66]Since there is no definition of when a firm can call itself AI-powered, it is not possible to draw the difference between accuracy and overstatement.[67]This is the puffery defence: a claim about the technology's capabilities may be construed as mere salesmanship that need not be proven true because there is no requirement for substantiation.[68]

The fourth and most structural constraint is that of coverage. The sophisticated Indian disclosure regime of LODR Regulations, material events, and the BRSR reporting regime applies primarily to the biggest publicly traded companies.[69]But AI washing seems to be just as common among unlisted start-ups and consumer-oriented technology companies that operate outside of the disclosure regime, because the prospectus requirements apply only periodically, while consumer law applies only to consumer-oriented claims.[70]And this makes for a selective enforcement mechanism—one which works well to curb fabrication, but which cannot cope with competence exaggeration.[71]

VII. Toward a Calibrated Anti-AI-Washing Framework for India

Reform comes out of the diagnosis. Since there is a system in place, just needing adjustment, the reform must be multi-tiered and managerial, rather than a single law with all the risks of

[63] See AI Washing, supra note 6.
[64] Cf. TSC Indus., 426 U.S. at 448–50 (materiality); Basic, 485 U.S. at 231–32.
[65] See AI Washing, supra note 6 (noting the absence of specific Indian provisions and the resulting uncertainty).
[66] See Ministry of Electronics & Info. Tech., supra note 5; see also AI Governance Guidelines Development (Jan. 2025) (draft report).
[67] Cf. AI Act, supra note 29, art. 3 (supplying, by contrast, a statutory definition of an "AI system").
[68] See TSC Indus., 426 U.S. at 448–50; cf. Cent. Consumer Prot. Auth., supra note 63 (substantiation shifting the evidentiary burden).
[69] See SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 4 (India); BRSR framework, SEBI Circular (May 10, 2021) (top 1,000 listed entities by market capitalisation).
[70] See Companies Act, 2013, §§ 34–36 (India); Consumer Protection Act, 2019, § 2(28) (India).
[71] Cf. Press Release, supra note 3 (addressing an egregious fabrication); AI Washing, supra note 6 (noting the greater difficulty of policing capability inflation).

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overbreadth associated with India's early AI guidance.[72] Five measures under existing authority would make the regime operative.[73]

To begin with, SEBI must come out with a disclosure circular on AI representations, similar to what has been done by it in respect of green debt in February 2023, that any material representation of AI by the listed company or intermediary is true, not misleading, and is substantiable on demand, and falls under Regulation 4(1)(c) of LODR/PFUTP.[74] It should also fix a working threshold for "AI-powered."[75]Second, guidelines should be issued by the CCPA regarding misleading statements about AI, which can be modelled after its 2024 guidelines regarding anti-greenwashing statements.[76]

Third, the structured-disclosure rationale of the BRSR should apply to material dependencies on AI in the biggest listed firms moving the AI claim from marketing to auditable disclosure.[77]Fourthly, there ought to be established a marketing guideline under the Investment Advisers Regulations, just like that under the SEC's Marketing Rule, in which advisers' representations about AI are true and supported.[78]Furthermore, a calibrated safe harbour would shield an enterprise from any penalty where it truthfully describes its AI technology and can verify the same upon request, such that the policy discourages misrepresentation while not punishing innovation.[79]

Two aspects will ensure coherence. Firstly, the multiple number of regulators such as SEBI, CCPA, MeitY, and the Registrar carries with it the risk of fragmentation similar to that of ESG disclosure.[80]The India AI Governance Guidelines' structure, in which the nodal ministry is MeitY and sectoral regulators have the authority to enforce, needs to give this allocation: SEBI for securities, the CCPA for consumer issues, and the registrar for company law statements.[81]Since this cannot be done through securities and consumer law alone, the fraud provisions in the Companies Act must apply to AI claims in private placements, where the duty of care under Section 166(3) includes verifying material technological claims.[82]This is what

[72] See ISAS, Unpacking India's New AI Advisory (2024) (noting industry criticism that the March 1, 2024 advisory risked a "license-raj" before its revision on Mar. 15, 2024).
[73] See infra notes 77–86 and accompanying text.
[74] Cf. SEBI, Dos and Don'ts Relating to Green Debt Securities, supra note 54.
[75] Cf. AI Act, supra note 29, art. 3 (definitional precision as a regulatory prerequisite).
[76] See Cent. Consumer Prot. Auth., supra note 63.
[77] See BRSR framework, supra note 72; cf. SEBI, BRSR Core (July 2023).
[78] Cf. 17 C.F.R. § 275.206(4)-1; Baker McKenzie, supra note 22.
[79] Cf. 15 U.S.C. § 77z-2 (safe harbour for forward-looking statements); Cent. Consumer Prot. Auth., supra note 63 (substantiation on request).
[80] See Fox Mandal, supra note 54 (fragmentation across the Indian ESG-disclosure regime).
[81] See Ministry of Electronics & Info. Tech., supra note 5 (MeitY as nodal ministry; sectoral regulators retaining enforcement authority).
[82] Companies Act, 2013, §§ 166(3), 447 (India); see N. Narayanan, (2013) 12 S.C.C. 152.

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results in a stratified regime consisting of pre-event justification, post-event liability, and fiduciary responsibility made up of elements that India already has.[83]

VIII. Conclusion

The power of "AI washing" rests in its implication of an entirely new wrong calling for an entirely new law. This is not true. Essentially, it is a case of material misrepresentationa commercial wrongdoing of great antiquity. It has been shown by the United States that technology-neutral provisions cover it, by the European Union that transparency ahead of time curtails it, and now, with the experience of greenwashing faced in India, a domestic template has emerged in the 2024 guidelines of the CCPA and the SEBI's actions on green securities.[84] Therefore, the Indian corporate-disclosure regime the Companies Act, 2013; the SEBI Act, 1992 and its regulations; and the Consumer Protection Act, 2019does not amount to a vacuum, but to a sleeping anti-AI-washing regime that is underutilized rather than non-existent. Its shortcomings are evident: materiality remains unadjudged; "AI" is undefined; the puffery defense prevails; and the regime is biased towards publicly held companies. However, each one of those shortcomings can be addressed through calibration namely, through a SEBI circular, a CCPA guidance, enhanced disclosure requirements, a standards for advisers' marketing practices, and a substantiation obligation with a safe harborwithout a complete AI law.[85]

[83] See supra Parts V–VII.
[84] See Press Release, supra note 3; AI Act, supra note 29; Cent. Consumer Prot. Auth., supra note 63.
[85] See supra Part VII; Companies Act, 2013, § 166(3) (India); SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 4(1)(c) (India).