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LEGAL ASPECTS OF GREENWASHING UNDER INTERNATIONAL ENVIRONMENTAL LAW AND DOMESTIC LAWS OF INDIA

Ms. Gayathri K S

Student, Department of Environmental Law,
School of Excellence in Law, TNDALU.

ABSTRACT

In recent years consumer demand for sustainable and eco-friendly products are comparatively higher. It has led to the rise of “greenwashing" which is a deceptive marketing practice where companies misrepresent their products, services and their policies as environmentally friendly when they are not. At the international level, the eminent organisations such as the United Nations Organisation and the European Union differs their perspective by enacting guidelines and regulations to address greenwashing. Additionally, the Organisation for Economic Co-operation and Development (OECD) provides guidelines for multinational corporations to ensure honest environmental advertising.

In India, legal provisions to curb greenwashing are embedded within existing consumer protection and environmental laws. The Consumer Protection Act, 2019, prohibits false and misleading advertisements, empowering consumers to take action against deceptive claims. The Environment Protection Act, 1986, mandates strict compliance with environmental regulations, and the Bureau of Indian Standards has introduced eco-labelling schemes such as the Ecomark certification to authenticate genuinely sustainable products. Furthermore, the Advertising Standards Council of India has issued guidelines against misleading environmental claims in advertisements. Despite these legal measures, enforcement remains a significant challenge, and greenwashing continues to thrive due to regulatory loopholes and inadequate penalties. Strengthening oversight mechanisms, increasing transparency, and imposing stringent penalties on violators are crucial steps in addressing this issue. Additionally, consumer awareness and corporate social responsibility must be encouraged to ensure ethical marketing practices.

Keywords*:* green washing, eco-friendly, consumer, misrepresentation, national legislations.

INTRODUCTION

The term green washing was coined by an environmentalist Jay Westerly in his essay "the Hospitality Industry[1]. The concept of sustainable development and the corporate social responsibility has payed way for green washing. The inclined consumer interest towards the environmentally friendly products has led to *greenwashing* which misleads consumers, undermines genuine sustainability efforts, and poses significant environmental and economic risks. The greenwashing shall be defined as "The greenwashing phenomenon can be defined as - a conscious attempt to communicate to customers the positive environmental or social information, which are not covered by the actual activities of the organization, in so far as it has been communicated to"[2]. In order to address this issue, various International legal frameworks have sought to regulate corporate sustainability claims, ensuring that businesses remain transparent and accountable for their environmental impact. The global agreements such as the Paris Agreement, the UN Sustainable Development Goals and the European Union's Green Claims Directive provide mechanisms to prevent corporations from making deceptive environmental claims. The UN's Sustainable Development Goals emphasize responsible consumption and production, urging companies to adopt transparent environmental policies. The European Union's Green Claims Directive mandates strict verification of sustainability claims, imposing penalties on companies that mislead consumers. While there are robust anti-greenwashing laws, it still faces significant regulatory gaps. The absence of mandatory sustainability reporting, independent verification systems and strict enforcement mechanisms has created opportunities for companies to engage in greenwashing without facing legal consequences. Additionally, regulatory bodies lack the necessary technical expertise and resources to monitor corporate environmental claims effectively. The lack of public awareness about greenwashing and limited legal remedies for consumers further exacerbate the problem, allowing misleading environmental claims to go unchecked. This paper examines the

[1] Wolniak, Radosław, and Patrycja Hąbek. 2015. Reporting process of corporate social responsibility and greenwashing, Volume 3: Ecology, Economics, Education and Legislation.
[2] Bowen F., After greenwashing. Symbolic Corporate Environmentalism and Society, University of Cambridge, 2014.

international legal framework governing greenwashing, evaluates Iraq's national laws and regulatory mechanisms, identifies loopholes in its legal system, and proposes policy recommendations to strengthen anti-greenwashing enforcement. By adopting global best practices, strengthening legal frameworks, and enhancing regulatory oversight, India can effectively combat greenwashing and promote genuine corporate sustainability efforts.

THE CONCEPT AND EVOLUTION OF GREENWASHING

In the early 1970s, corporates began capitalizing on growing environmental concerns sparked by the publication of Rachel Carson's Silent Spring[3], which exposed the dangers of pesticides. As consumer awareness increased, companies sought to maintain their public image by launching eco-friendly marketing campaigns however many of which were misleading. The oil industry was one of the earliest adopters of greenwashing, these companies portrayed themselves as environmentally responsible while continuing to engage in large-scale pollution and environmental degradation.

The 1980s marked the rise of corporate environmental branding, with businesses increasingly using sustainability as a marketing strategy rather than a genuine operational shift. Later in the year 1896 The term "greenwashing" was coined by environmentalist Jay Westerveld in his essay The Hospitality Industry. He criticized hotels for encouraging guests to reuse towels under the pretense of environmental conservation, while they themselves failed to adopt broader sustainable practices.[4] This tactic prioritized profit over genuine environmental responsibility. However, the practice itself existed long before the term was introduced.

The early 2000s saw the mainstream adoption of sustainability in corporate branding, as businesses increasingly promoted Environmental, Social, and Governance[5] initiatives and Corporate Social Responsibility programs[6]. However, these initiatives often lacked

[3] Rachel Carson, *Silent Spring, 2000.*
[4] Anna Francesca Macesar, The History of Greenwashing. See , https://thesustainableagency.com/blog/the-history-of-greenwashing/
[5] Who cares wins : connecting financial markets to a changing world, Washington, D.C. : World Bank Group. http://documents.worldbank.org/curated/en/280911488968799581
[6] Wartick, Steven L., and Philip L. Cochran. "The Evolution of the Corporate Social Performance Model." *The Academy of Management Review*, vol. 10, no. 4, 1985, pp. 758–69. *JSTOR*, https://doi.org/10.2307/258044

transparency, and many companies used them as a public relations strategy rather than a commitment to real change. One of the most infamous greenwashing cases was BP's "Beyond Petroleum" campaign in 2000, which rebranded the company as a leader in renewable energy while it continued to be one of the world's largest polluters. During this period, terms like "eco-friendly" and "sustainable" became popular in marketing, even when companies failed to back these claims with concrete action.

LEGAL FRAMEWORK ON GREEN WASHING

As greenwashing has become a global issue, governments and international organisations have developed legal frameworks to regulate false environmental claims. These laws aim to ensure corporate accountability, prevent consumer deception, and promote genuine sustainability efforts. The legal framework on greenwashing is composed of international agreements, regional regulations, and national laws that define "acceptable corporate environmental practices" and impose penalties for misleading sustainability claims.

At the international level, agreements such as the Paris Agreement (2015) and the United Nations Sustainable Development Goals encourage corporate transparency and responsible environmental policies. The OECD Guidelines for Multinational Enterprises[7] further promote truthful corporate sustainability reporting, its recommendations include Recommendations "for enterprises to align with internationally agreed goals on climate change and biodiversity" . The European Union has taken a leading role in developing strict anti-greenwashing regulations by ensuring that the all information on a product's impact on the environment, longevity, reparability, composition, production and usage is backed up by verifiable sources[8]. The Green Claims Directive (2023)[9] mandates that companies provide verifiable scientific evidence to support their sustainability claims, prohibiting misleading eco-labels and false environmental

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[7] OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, https://doi.org/10.1787/81f92357-en.

[8] Stopping greenwashing: how the EU regulates green claims, see https://www.europarl.europa.eu/topics/en/article/20240111STO16722/stopping-greenwashing-how-the-eu-regulates-green-claims

[9] 'Green claims' directive Protecting consumers from greenwashing, see https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753958/EPRS_BRI(2023)753958_EN.pdf

marketing. Additionally, the Corporate Sustainability Reporting Directive[10] with an object of "companies above a certain size to disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment" requiring large businesses to disclose their environmental impact, ensuring investors and consumers receive accurate sustainability information.

At the national level, several countries have implemented consumer protection and advertising regulations to combat greenwashing. In the United States, the Federal Trade Commission (FTC) introduced "Green Guides"[11], which regulate false environmental marketing claims.The Federal Trade Commission's Green Guides are designed to help marketers avoid making environmental claims that mislead consumers. Further, the United Kingdom's Competition and Markets Authority (CMA) via CMA Green claims code, with an aim of "keen to protect consumers from being misled to ensure that only businesses which have proper evidence to make a valid environmental claim reap these commercial benefits" enforces strict advertising laws [12], while India's Consumer Protection Act (2019) prohibits deceptive marketing practices via its "Guidelines on Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022." However, in many developing nations greenwashing remains largely unregulated, with weak consumer protection laws and enforcement mechanisms.

While international and national frameworks exist to combat greenwashing, their effectiveness depends on robust enforcement and regulatory reforms. A multi-stakeholder approach, involving governments, regulatory bodies, corporations, and consumers, is essential to curb deceptive environmental claims and promote genuine sustainability. Strengthening legal

[10] Directive (EU) 2022/2464 of the European Parliament, see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464

[11] Environmentally Friendly Products: FTC's Green Guides, see https://www.ftc.gov/news-events/topics/truth-advertising/green-guides

[12] CMA Green Claims Code, see https%3A//www.pwc.co.uk/services/legal/cma-green-claims-code-now-in-effect.html

frameworks and enhancing consumer awareness can collectively contribute to a more transparent and environmentally responsible marketplace.

CHALLENGES IN REGULATING GREENWASHING

Inspite of the regulatory frameworks which exists worldwide and the domestic legislations in India there are several challenges in regulating the greenwashing concept. The enforcement difficulties the need for technical expertise to verify complex environmental claims, raising consumer awareness, keeping pace with evolving marketing techniques, balancing regulation with innovation, and addressing international greenwashing issues.[13]

1. Lack of Clear Legal Definition

The challenges in regulating greenwashing in the absence of clear definition for the technical terms.[14] Many companions exploit this ambiguity by making vague or misleading claims without facing legal consequences. Without standardized definitions, regulatory bodies struggle to determine what constitutes genuine sustainability verses deceptive marketing.

2. Weak Enforcement Mechanisms

The various nations has come up with the strong consumer protection laws, however enforcement agencies often lack the necessary resources, expertise and authority to regulate false environmental claims effectively and the lack of institutional framework[15] to monitor greenwashing remains a lacunae in effective management against greenwashing. Many greenwashing cases go unnoticed allowing companies to continue misleading consumers repercussions.

3. Complex and Inconsistent Global Standards

There is no universal legal framework governing greenwashing leading to inconsistencies across different countries and regions. While the European Union has adopted strict anti-greenwashing regulations other regions including parts of Asia, Africa and the Middle East lack comprehensive legal mechanisms. This creates a situation where multinational

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[13] Tanvi Krishnan, The Regulatory Landscape of Greenwashing in India: A Legal Perspective, see https://ijalr.in/the-regulatory-landscape-of-greenwashing-in-india-a-legal-perspective/

[14] The Challenge of Greenwashing: An International Regulatory Overview, see https://assets.kpmg.com/content/dam/kpmg/cy/pdf/2024/the-challenge-of-greenwashing-report.pdf

[15] Summary Report: Greenwashing – Legal Risks and Opportunities ,see https://climatehughes.org/greenwashing/

corporations can exploit regulatory gaps by complying with weaker laws in certain jurisdictions while marketing their products as sustainable worldwide[16].

4. Difficulty in Proving Greenwashing

The regulatory authorities face challenges in gathering evidence and proving greenwashing in court. Many companies use complex sustainability reporting that includes selective data or technical jargons[17] making it difficult for the regulators and the consumers to verify the authenticity of their claims. Further the companies argue that their misleading statements are unintentional which complicates the legal proceedings.

5. Lack of Consumer Awareness and Action

Many consumers are unaware of the greenwashing practises or lack the tools to identify sustainable claims. Additionally in many cases consumers do not report misleading claims making it easier for corporations to continue deceptive marketing without facing accountability. According to the research the researchers conclude that, "research finds that two in three (63%) adults believe that many brands only get involved with sustainability for commercial reasons, as opposed to ethical reasons, highlighting the need for authentic and meaningful marketing to build consumers' trust."[18]

6. Emerging Trends in Digital Era

In the rise of digital marketing and social companies now have new ways to engage in greenwashing. Influencer marketing indulges in unverified environmental claims on websites and fake eco-certifications make it harder to track and regulate the misleading sustainable claims.

CASE STUDIES ON GREEN WASHING

Volkswagen Emissions Scandal (2015)

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[16] More than Just a Business Ploy? Greenwashing as a Barrier to Circular Economy and Sustainable Development: a Case Study, https://doi.org/10.1007/s43615-023-00288-9

[17] Greenwashing: Is your business doing sustainable advertising correctly?, see https://www.mishcon.com/news/greenwashing-is-your-business-doing-sustainable-advertising-correctly

[18] Consumer focus on sustainability outstrips marketers current skill set with half still fearful of 'greenwashing', see https://www.cim.co.uk/newsroom/release-consumer-focus-on-sustainability-outstrips-marketers-current-skill-set-with-half-still-fearful-of-greenwashing/

The Volkswagen Emissions Scandal which also known as "Dieselgate"[19], is one of the most identified significant corporate fraud cases in the automotive industry. In the year 2015 Volkswagen considered to be one of the world's largest car manufacturers, was found to have deliberately manipulated emissions tests by installing "defeat devices" in millions of its diesel vehicles. The scandal led to severe legal, financial, and reputational consequences for the company and reshaped the global automobile industry's regulatory landscape.

Facts of the case

Volkswagen had promoted its diesel vehicles as environmentally friendly and fuel-efficient, emphasizing their compliance with strict emissions regulations in the U.S. and Europe. However, in 2014 researchers from the International Council on Clean Transportation (ICCT) and West Virginia University conducted independent tests on VW diesel vehicles and found that their real-world emissions were significantly higher than those recorded in laboratory tests. The findings were reported to the U.S. Environmental Protection Agency and the California Air Resources Board leading to an official investigation.

In September 2015, Volkswagen admitted to using software that detected when a vehicle was undergoing an emissions test and temporarily reduced emissions to meet legal standards. However, during normal driving conditions, these vehicles emitted nitrogen oxides (NO_x)[20] up to 40 times the legal limit. The deception involved approximately 11 million vehicles worldwide, including 500,000 in the U.S.

The scandal raised several key issues such as the act of the company knowingly violated U.S. and European emissions standards, deceived consumers by falsely marketing their vehicles as "clean diesel" and engaged in corporate misconduct. After this event the company also recalled millions of affected vehicles and offered buybacks or modifications to consumers. Criminal charges were filed against several VW executives, including former CEO Martin Winterkorn, who was charged with fraud in Germany. Additionally, it accelerated the global shift toward

[19] The Volkswagen Diesel Emissions Scandal and Accountability, see https://www.cpajournal.com/2019/07/22/9187/

[20] The Emissions Issue, see https://annualreport2015.volkswagenag.com/group-management-report/the-emissions-issue.html

electric vehicles as governments and consumers lost trust in diesel engines. The Volkswagen Emissions Scandal remains one of the most significant corporate fraud cases in history, highlighting the risks of unethical corporate behaviour and reinforcing the importance of stringent environmental enforcement and consumer protection laws.

Penalties

The Volkswagen Emissions Scandal approximately resulted in over $30 billion in fines, settlements, and penalties worldwide. In the United States, Volkswagen agreed to a $14.7 billion[21] settlement in 2016 with the Environmental Protection Agency, California Air Resources Board, and Federal Trade Commission which including $10 billion for vehicle buybacks and modifications[22], $2.7 billion for environmental mitigation, and $2 billion for clean energy and electric vehicle (EV) infrastructure. In 2017, VW pleaded guilty to criminal charges, leading to an additional $4.3 billion in criminal and civil penalties, including a $2.8 billion criminal fine for conspiracy and obstruction of justice and a $1.5 billion civil fine for environmental and regulatory violations. The company also paid $1.2 billion to settle claims with U.S. dealers and individual states. In Germany, Volkswagen was fined €1 billion (2018) for organizational failures in emissions compliance, while its subsidiaries, Audi and Porsche, faced fines of €535 million (2019) and €800 million (2018), respectively. Globally, Volkswagen faced penalties in several countries, including $2.1 billion in Canada (2020) and $125 million in Australia for misleading consumers. The company also settled €750 million in consumer lawsuits across various European nations. Additionally, several Volkswagen executives faced criminal charges, including former CEO Martin Winterkorn, who was charged with fraud and conspiracy, while Oliver Schmidt, a VW executive in the U.S., was sentenced to 7 years in prison and fined $400,000. The scandal's overall financial impact, including legal penalties, settlements, vehicle recalls, and compensation, is estimated to exceed $30 billion, making it one of the most expensive corporate fraud cases in history.

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[21] U.S. Department of Justice, Press Release, Volkswagen to Spend Up to $14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles see, https://www.justice.gov/archives/opa/pr/volkswagen-spend-147-billion-settle-allegations-cheating-emissions-tests-and-deceiving

[22] Ibid.

H & M "Conscious Collection."

H&M which is considered to be one of the world's largest fast-fashion retailers, has faced scrutiny over its sustainability claims particularly regarding its "Conscious Collection"[23]. The company marketed few collections as an eco-friendly alternative that it was made using sustainable materials and promoting environmental responsibility. However critics and regulatory bodies have raised concerns about the lack of transparency in these claims, leading to accusations of greenwashing

Issues raised[24]

H&M marketed the few collections "Conscious Collection" as being made from sustainable materials without providing clear evidence or third-party verification. Further, the company failed to disclose the environmental impact of its supply chain, production processes and actual sustainability benefits which is obtained out of it. It was highly criticised by the consumer advocacy groups and regulatory bodies accused H&M of exaggerating its environmental commitments to attract eco-conscious consumers.

Legal Action and Penalty

The European Union launched an investigation into misleading advertising by H&M, questioning the validity of its sustainability claims. Authorities examined whether the company's marketing misled consumers into believing the Conscious Collection was

[23] Fashion cost - sustainable value?, see https://www.researchgate.net/publication/360609368_Sustainable_fast_fashion_-_case_study_of_HM DOI:10.13140/RG.2.2.13072.89600

[24] Zellweger, T. (2017), The Dark Side of Fast Fashion – In Search of Consumers 'Rationale Behind the Continued Consumption of Fast Fashion The Dark Side of Fast Fashion – In Search of Consumers 'Rationale Behind the Continued Consumption of Fast Fashion Master Thesis, Stockholm Business School, see, https://www.diva-portal.org/smash/get/diva2:1119771/FULLTEXT01.pdf

significantly more eco-friendly than other collections. The H&M case highlights the growing regulatory focus on corporate sustainability claims and the risks of greenwashing in the fashion industry. It underscores the need for greater transparency, independent verification, and genuine commitment to environmental responsibility. The H & M and Decathlon has accepted to pay will pay €400,000 and €500,000 respectively to "sustainability causes" to avoid further sanctions by the Netherlands Authority for Consumers and Markets (ACM).[25]

POLICIES AND RECOMMENDATIONS

1. As greenwashing concerns grow, there is an urgent need to strengthen legal and policy responses to ensure corporate accountability and transparency in sustainability claims. Key measures include mandatory ESG (Environmental, Social, and Governance) reporting and audits, which would require companies to provide verified data on their sustainability practices. Independent audits and third-party certifications can prevent misleading environmental claims and enhance corporate accountability.

2. Global standardization of environmental claims is essential to create a unified regulatory framework, ensuring that sustainability claims follow consistent and enforceable guidelines across industries and jurisdictions.

3. To deter deceptive practices, stricter penalties and consumer litigation should be enforced, empowering both regulators and consumers to challenge misleading greenwashing tactics. Stronger legal consequences, including fines and class-action lawsuits, can hold corporations accountable for false sustainability claims.

4. Technology plays a crucial role in enhancing transparency, with AI and blockchain providing real-time tracking of corporate environmental performance. Blockchain can create tamper-proof records of supply chain data, while AI can analyze and verify sustainability reports, ensuring that companies meet their stated environmental commitments.

[25] H&M to adjust or no longer make green claims, see https://apparelinsider.com/hm-to-adjust-or-no-longer-use-green-claims/

By implementing these measures, regulators can strengthen enforcement mechanisms, protect consumer rights, and promote genuine corporate sustainability efforts, ultimately leading to a more transparent and accountable global marketplace.

CONCLUSION

Greenwashing poses a significant challenge to achieving global sustainability goals. While international environmental laws provide a basic framework, stricter enforcement, global cooperation, and consumer protection laws are necessary. Greenwashing misleads consumers, undermines genuine sustainability efforts, and poses significant environmental and economic risks. Various national and international legal frameworks have been established to combat such deceptive practices and ensure corporate accountability The paper recommends implementing mandatory reporting, legal penalties, and third-party verification to ensure companies adhere to genuine sustainability practices.