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## **GREEN MARKING AND GREENWASHING: ANALYSING THE THREAT AND LEGAL GAPS IN INDIA**

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### **INTRODUCTION**

Innovation is the creation, development and innovation of a new product and service with the aim of providing efficiency of products, ameliorating the short comings. In its agenda for 2030 on sustainable development, WIPO summed up the importance of IP right to green technology and sustainable economy. Green innovation is a product of 21<sup>st</sup> century where Green marketing was introduced in 1980s whereby its importance has been substantially increased. In the modern world innovation is not confined with technology and industries but it also have an accountability to promote inventions of sustainable development nature which promotes products which are 100% natural. Green innovation concept is something which witnessed a paradigm shift to sustainable, economic friendly, resource friendly economy and society. They subsequently leads to sustainable development and pace up the transition towards a green economy. Green technologies can be less polluting and more focus on implementing environment protecting standards in their innovations.

In this century, the corporations and companies are showing a tendency to go with a trend of “Go-Green” whereby they are they claim themselves as Green tag products. The concept of “Going Green” has gained significant traction of recent years and this trend has been tremendously extended to a realm of Intellectual Property especially with the Trademark system. The reason why companies prefer Green marking over their products is that they could align their brand identity with so-called eco-friendly values. They got this conscience because they realised that linking their product with trademark concept like sustainability, health or nature, can significantly boost their revenue and attract more customers. This can be substantiated by INTA (International Trademark Association) Report on the Effect of Green washing and Green hushing on Brand Value. However, there are many limitations to verify this green trademarks, even such mechanisms exist, they remain obsolete or tendering a negligent impact. This lacks transparency allows businesses to exploit the green label raising serious concerns about credibility of these fancy green terminologies.

## **BACKGROUND OF THE STUDY**

The worldwide trend toward sustainability had forced companies to accept eco-friendly procedures and share them with customers through what is referred to as "green marketing." As part of their brand identity, businesses are increasingly emphasizing eco-friendly features, such as the use of organic materials, recyclable packaging, and lower carbon footprints. Theoretically, this kind of marketing influences consumer decisions in favor of greener options while also supporting the more general objectives of environmental preservation and sustainable development.

However, this story has become more complex due to the rise of greenwashing. Exaggerating, misrepresenting, or deceptively marketing goods or services as environmentally friendly while actually engaging in destructive practices is known as "greenwashing." In addition to deceiving customers, this damages sincere sustainability initiatives and erodes confidence in green claims. In addition to misleading customers, this damages sincere sustainability initiatives and erodes confidence in green claims. For example, advertising frequently uses terms like "natural," "eco-friendly," or "biodegradable" without substantiating standards or certifications, which leads to market ambiguity.

Sustainability is becoming more and more popular in India, thanks to initiatives like Extended Producer Responsibility under waste management regulations and growing consumer awareness of environmental issues. Meanwhile, the proliferation of false claims has been made possible by the lack of strong legal standards and enforcement procedures. Although they provide some partial solutions, current laws like the Consumer Protection Act of 2019, the Environment Protection Act of 1986, and the Advertising Standards Council of India's (ASCI) guidelines don't directly address the complex issue of green washing. This regulatory gap puts companies that invest in true green practices at a competitive disadvantage to those that make empty claims, leaving consumers vulnerable and undermining fair competition.

## **STATEMENT OF PROBLEM**

Greenwashing has become a major issue in India, despite the fact that green marketing has become a tool for promoting sustainable production and consumption. Businesses commonly take advantage of consumer trust and the growing demand for eco-friendly products by

advertising products with ambiguous, overstated, or fraudulent environmental claims. In addition to misleading customers, these tactics weaken larger environmental objectives, distort market competition, and lessen the impact of true sustainability initiatives.

This problem subsequently made a lacuna in legal framework system of India especially pertaining to Green washing. Existing laws such as Consumer protection Act, Environmental legislations and voluntary guidelines which are propounded by Advertising Standard Council of India deal with bogus advertisements and environmental harms in general, but does not explicitly provide definitions or enforcement mechanisms for green claims. The extent of green washing practices in India, their effects on consumers and the environment, and the weaknesses in the current regulatory framework must therefore be critically examined immediately. Green washing will continue to jeopardize consumer rights and India's commitment to sustainable development in the absence of more robust legal measures.

### **RESEARCH QUESTIONS**

1. To what extent do current Indian laws and regulatory mechanisms address misleading environmental claims in advertisements?
2. What legal and enforcement gaps exist in tackling green washing under Indian law?
3. What legal and policy recommendations can be made to ensure authenticity in green marketing and curb deceptive green washing practices in India?

### **RESEARCH OBJECTIVES**

1. To evaluate the existing legal and regulatory framework in India to curb misleading environmental claims
2. To identify the legal and policy gaps revealing among the Indian market in terms of Green washing
3. To recommend legal reform and policy reforms that can strengthen consumer protection and ensure corporate accountability in sustainability claims.

### **RESEARCH METHODOLOGY**

The study is mainly focused on doctrinal aspects where the primary sources will be comprised

of statutes like Consumer Protection Act, 2019, Competition Act, Environment Protection Act, ASCI Guidelines, and International Instruments and Conventions will be also taken as Primary Resources. Coming to the Secondary Resources,

Mode of Citation would be 21<sup>st</sup> Blue Book.

## 1. The Green Communication Dichotomy in the Indian Market

The Indian marketplace is experiencing a significant transformation due to the emergence of the environmental awareness of consumers. This transformation is especially evident among urban and young consumers whose preferences for "green" products is prompting the transition of "green marketing" from a marginal element of corporate social responsibility (CSR) to a business strategy. <sup>1</sup>Research confirms the attitudinal shift, with a recent survey of urban Indian consumers revealing that two thirds of respondents actively sought environmentally responsible action in relation to businesses' practices, including using greener materials and reducing carbon footprints. The awareness of consumers was comprehensive, as one-third of urban consumers reported they were choosing natural products for their health benefits, while one-quarter of the sample chose natural products because they were environmentally friendly. This awareness and demand has driven the expansion of a robust demand for environmentally sustainable products, and various research studies confirm consumers are not only aware of green products but they are generally satisfied with their performance and report they would pay a price premium, despite still being concerned with price and availability.

Despite this body of pro-environmental sentiment, there are some complexities. The so-called "attitude-behaviour gap" exists, where consumers want to buy sustainably but their actions are restricted by pragmatic concerns like cost and availability. The gap is a real vulnerability for the market. Consumers want to buy in accordance with their values, but prices hamper their 'green' purchasing decision, and they become vulnerable to marketing claims that suggest a simple and cheap way to be "green." This is fertile ground for fraudulent practice, as sustainability can be manipulated to capture a well-meaning consumer segment that cannot afford relatively high-price points.

The practice of "green marketing" within India has evolved to respond to these changes in the

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<sup>1</sup> Sanjay K. Jain & Gurmeet Kaur, *Green Marketing: A Study on Indian Youth*, 4(2) Indian J. Com. & Mgmt. Stud. (2013).

consumer. It begins in the late 1980s and early 1990s, and began as a narrow definition responding to current crises and a growing awareness of environmental issues. The progress has moved through stages: the first being an "Ecological" stage trying to remediate and fix environmental problems; the second being an "Environmental" stage trying to address issues through technology and reduction influences; and the third stage is a "Sustainable" stage which is a more holistic product and service life-cycle approach. The evolution has been driven by a myriad of factors, including changing consumer attitudes, increasing competition, and a heightened level of government regulation. Green marketing is no longer just a technique; it is, in fact, a strategic need for establishing brand equity and obtaining a competitive advantage in a marketplace that is more inclined to evaluate sustainability.<sup>2</sup>

## 1.2 Greenwashing: Falsehood Masked as Sustainability

Along with the rise of true green marketing comes its false counterpart, "greenwashing," a serious common problem. Greenwashing is the act of misleading the consumer about a company's, or the environmental benefits of a product or service, essentially creating a facade of environmental accountability. The term, which is also a metaphor for "whitewash", implies the practice of spending more time and money on marketing a product as "green" than on actually trying to reduce its environmental impact.<sup>3</sup> The falsehood of greenwashing can be recognized by a few identifiable approaches, known as the "sins of greenwashing".

The prevalence of this behavior is disturbing. A report from 2010 revealed that over 95% of products marketed as green violated at least one of these sins. More recently, data from India shows that this problem is also present. A study from the Advertising Standards Council of India (ASCI), for example, showed that 79% of environmental claims both misleading and exaggerated. In addition to the ASCI study, the report also cites an unidentified study indicating that 71% of Indian consumers had first-hand experience of greenwashing.

Such a high prevalence indicates that the issue does not refer solely to a few bad actors but is instead indicative of a systemic market failure. If a vast majority of "green" claims are suspect, the market signal around sustainability becomes completely noisy. This creates a market for lemons in which consumers, unable to easily distinguish between genuinely sustainable products and greenwashed products, become cynical and distrustful of any environmental claims. The

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<sup>2</sup> *Green Marketing and Green Washing: A Study of Companies in India*, 3(2) *Manage J.* (2017).

<sup>3</sup> *Green Marketing vs Green Washing: A Case Study of Indian Companies*, 6(5) *Int'l J. Bus. & Mgmt.* (2018)

erosion of trust hurts the brand equity of companies making an honest effort and the broader sustainability movement, by dissuading authentic investments by companies in environmental innovation. More than voluntary compliance is needed in order to solve this systemic problem; rather, robust regulatory measures are necessary to restore integrity to the market and to provide clarity.

### **1.3 Case Studies in Contrast: Authentic Green Marketing vs. Alleged Greenwashing in India**

The Indian corporate landscape provides a stark contrast between companies undertaking comprehensive, verifiable sustainability initiatives and instances where product-level marketing has been accused of green washing.

#### **1.4 Examples of Genuine Green Marketing:**

**ITC Limited:** A conglomerate that has embedded a "Triple Bottom Line" philosophy—focusing on economic, social, and environmental performance—into its core strategy. Its sustainability credentials are built on long-term, large-scale programs<sup>4</sup>. The e-Choupal initiative, launched in 2000, empowered millions of farmers with internet access to real-time market prices and agricultural best practices, creating a more efficient and sustainable supply chain while enhancing rural livelihoods. ITC's sustainability reports detail significant, quantifiable achievements: the company has been carbon positive for 16 years, water positive for 21 years, and solid waste recycling positive for 18 years. As of 2024, it met 50% of its energy needs from renewable sources, well ahead of its 2030 target, and its afforestation program has created a green cover of over 1.1 million acres, generating substantial employment.

**Hindustan Unilever Limited (HUL):** Through its decade-long Unilever Sustainable Living Plan (USLP) (2010-2020), HUL demonstrated a commitment to decoupling growth from environmental impact. Quantifiable outcomes in India include an 85% reduction in CO<sub>2</sub> emissions and a 58% reduction in water consumption per tonne of production within its manufacturing operations against a 2008 baseline.<sup>5</sup>

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<sup>4</sup> R. Akhtar et al., *Green Consumerism: A Study of Challenges and Opportunities in India*, 10(4) J. of Mgmt. Res. & Analysis (2021).

<sup>5</sup> *Impact of green marketing, greenwashing, and green confusion on green brand equity*, 25(3) J. of Global Fashion Mktg. (2022)

## Documented Allegations and Examples of Greenwashing in India:

Despite strong corporate-level initiatives, several of these same companies, among others, have faced allegations of greenwashing at the product level, highlighting a critical disconnect between corporate policy and marketing execution. Greenwashing is particularly prevalent in the Fast-Moving Consumer Goods (FMCG), fast fashion, plastics, and energy sectors. Hindustan Unilever Limited (Surf Excel) was accused of falsely advertising its Surf Excel Easy Wash detergent as "100% natural" and "environment-friendly" when the product contained synthetic ingredients.<sup>6</sup> Similarly, Voltas Limited was accused of making false claims that its ACs were eco-friendly and possessed a "5-star energy rating," when in fact they had a lower rating. The Advertising Standards Council of India (ASCI) imposed a penalty of ₹50,000. Godrej Consumer Products Limited faced allegations of greenwashing for its soap, which was marketed as "100% natural," "biodegradable," and "eco-friendly."<sup>7</sup> It was found to contain synthetic ingredients, leading to a fine of ₹15 lakhs from ASCI.

These cases reveal a crucial paradox. Large, well-regarded corporations can simultaneously champion comprehensive, data-backed sustainability programs at the corporate level while their marketing departments engage in misleading environmental claims for specific products. This suggests that greenwashing is not always a top-down strategy of corporate deception but can emerge from product-level marketing pressures. This disconnect between a company's sustainability office and its brand managers highlights a significant challenge for regulation, which must be granular enough to scrutinize individual product claims, not just high-level corporate reports. It also points to a need for stronger internal governance to ensure that consumer-facing communications align with corporate sustainability commitments.<sup>8</sup>

## 2. India's Regulatory Reaction to Greenwashing: The Legal Maze

India's legal approach to combating greenwashing has evolved from a reliance on general consumer protection statutes to a more specific and targeted regulatory regime. This evolution reflects a growing recognition of the unique threat posed by deceptive environmental

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<sup>6</sup>Sustainable Marketing in India: Evolution, Challenges, and Opportunities, 8(2) IEMS J. of Mgmt. Res. (2021).

<sup>7</sup> Green Marketing: An Emerging Trend in India, 2(1) Int'l Res. J. of Applied Econ. & Mgmt. (2022).<sup>1</sup>

<sup>8</sup> Consumer Attitude towards Green Products: Evidences from Nagaland, India, 15(2) J. of Positive Sch. Psych. (2022)

marketing.<sup>9</sup>

## 2.1 The Foundational Framework: Consumer Protection and Trademark Law

The cornerstone of India's fight against misleading advertising is the Consumer Protection Act, 2019 (CPA). While not designed specifically for greenwashing, its broad provisions provide a foundational legal basis for action. Section 2(28) of the Act defines a "misleading advertisement" as one that gives a false description of a product or service or deliberately conceals important information. Furthermore, Section 2(47) defines an "unfair trade practice" to include any false or misleading representation regarding the standard, quality, or grade of goods or services. Greenwashing, which involves making false claims about a product's environmental quality, falls squarely within these definitions. The Act established the Central Consumer Protection Authority (CCPA), a powerful regulatory body with the authority to investigate complaints, order the discontinuation of misleading advertisements, and impose significant penalties—fines up to ₹10 lakh for a first offense and ₹50 lakh for subsequent contraventions, along with potential imprisonment.<sup>10</sup>

The Trademarks Act, 1999, serves as an indirect tool. Section 9(2)(a) of the Act provides grounds for the refusal of trademark registration if a mark is of such a nature as to deceive the public. This can be applied to marks that use terms like 'Eco' or 'Green' in a deceptive manner. Such terms may also be rejected on the grounds that they are merely descriptive of the product's characteristics and lack distinctiveness.<sup>11</sup> However, the effectiveness of the Trademarks Act is limited. Trademark registration is not mandatory in India, allowing a multitude of unverified "green" brands to operate without scrutiny. Moreover, the legal process for opposing or cancelling a misleading trademark is often lengthy and expensive, creating a barrier to its use as a rapid response tool against greenwashing.

Prior to the introduction of specific guidelines in 2024, these foundational laws acted as "blunt instruments." Their general nature meant that applying them to the nuanced and often technical claims of greenwashing was challenging. Regulators and courts faced the difficult task of interpreting how a vague term like "eco-friendly" constituted an "unfair trade practice" under

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<sup>9</sup> Consumer Perception towards Sustainable and Eco-friendly Products in India, 5(3) Int'l J. of Arts, Mgmt. & Soc. Sci. (2023).

<sup>10</sup> A. Sarkar & P. Kota, Consumer Purchasing Patterns for Sustainable Products in India, 10(3) J. of Contemporary Mgmt. Res. (2015).

<sup>11</sup> Nangia & Co LLP, CSR Impact Assessment Report (2025)

the law, leading to potential inconsistencies and placing a high burden of proof on consumers. This legal ambiguity created a regulatory vacuum that allowed greenwashing to proliferate, underscoring the necessity for more specific, targeted rules.<sup>12</sup>

## 2.2 Self-Regulation and Its Limits: The Role of the Advertising Standards Council of India (ASCI)

The Advertising Standards Council of India (ASCI) has played a pivotal role in shaping ethical advertising norms in India. As a voluntary, self-regulatory body, its primary function is to establish and maintain a code for advertising practices. Recognizing the rise in deceptive environmental claims, ASCI introduced its "Guidelines for Advertisements Making Environmental/Green Claims," which became effective on February 15, 2024. These guidelines represent a significant step in setting clear industry standards. Key provisions mandate that:

- Claims must be specific and limited to the part of the product or service that possesses the environmental benefit.
- Absolute claims like "eco-friendly" or "sustainable" must be substantiated with robust, verifiable data.
- Environmental claims must be based on the full lifecycle of the product, unless explicitly stated otherwise.
- Advertisements must not use visual elements, such as green color schemes or nature imagery, to create a misleading impression of environmental friendliness.

Despite their detailed and well-considered nature, the primary limitation of ASCI's guidelines lies in their enforcement mechanism. As a self-regulatory body, ASCI's decisions are not legally binding. It can recommend the withdrawal or modification of an advertisement, but it lacks the statutory power to impose fines or other legal penalties. This has led to criticism that the body is a "toothless tiger," with compliance remaining largely voluntary, though it is widely respected within the industry.

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<sup>12</sup>Exploring the True Shade of Green: A Critical Examination of the Central Consumer Protection Authority's Guidelines on Corporate Greenwashing, 15(1) Indian J. of Clinical Legal Prac. (2023).

However, a symbiotic relationship has recently evolved between self-regulation and state regulation. The CCPA has formally recognized that a violation of ASCI's code may also constitute a contravention of the Consumer Protection Act, 2019. This development creates a powerful two-tiered enforcement system. ASCI, with its industry expertise and rapid complaint-handling process, can act as the first line of defence and an expert monitoring body. Cases of non-compliance or serious violations can then be escalated to the CCPA, which can leverage its statutory authority to impose legal penalties. This collaboration effectively bridges the gap between industry-specific knowledge and state-backed enforcement power, making the overall regulatory framework more robust and effective than either body could be in isolation.

### **3. A New Era of Accountability: The CCPA's 2024 Greenwashing Guidelines**

A landmark development in India's fight against green washing occurred with the finalization of the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024, by the Central Consumer Protection Authority (CCPA). Issued under the authority of the CPA 2019, these guidelines are legally enforceable and represent the most direct and comprehensive regulatory instrument against greenwashing in India to date.<sup>13</sup>

A cornerstone of the guidelines is the establishment of India's first official legal definition of greenwashing. It is defined as any "deceptive or misleading practice, which includes concealing, omitting, or hiding relevant information, by exaggerating, making vague, false, or unsubstantiated environmental claims". This definition is broad enough to cover not only outright falsehoods but also subtle forms of deception like omission and exaggeration.

The guidelines impose several key mandates on businesses:

1. **Prohibition of Vague and Ambiguous Terms:** Generic terms such as 'clean', 'green', 'eco-friendly', and 'sustainable' are explicitly prohibited unless they are accompanied by adequate qualifiers and substantiated with evidence.
2. **Mandatory Substantiation:** All environmental claims must be backed by "verifiable" evidence, which can include credible certifications or reliable scientific data. The burden of proof lies with the company making the claim.

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<sup>13</sup> S. Sensharma, G. Sinha & A. Sharma, *Do Indian Firms Engage in Greenwashing? Evidence from Indian Firms*, 16(5) Australasian Acct. Bus. & Fin. J. (2022).

3. Comprehensive and Honest Disclosures: All material information supporting a claim must be made accessible to consumers, for instance, through a QR code or URL on the product packaging. Crucially, the guidelines explicitly prohibit the "cherry-picking" of favorable data from research while obscuring unfavorable results.
4. Requirement for Specificity: Companies must clearly specify whether an environmental claim pertains to the entire product, its packaging, the manufacturing process, its usage, or its disposal.

Any violation of these guidelines is treated as a violation of the CPA 2019 and is subject to the same penalties, including substantial fines and potential imprisonment, thereby giving the new rules significant legal weight.<sup>14</sup>

### 3.1 Judicial Scrutiny and Precedents

While specific case law on greenwashing in India is still in its nascent stages, the Indian judiciary has demonstrated a proactive stance on related issues of consumer protection and corporate environmental accountability, setting important precedents. The judiciary's history of activism, particularly through Public Interest Litigation (PIL), has often filled legislative gaps in environmental and public health matters. This judicial climate has likely served as a catalyst, encouraging the executive branch to formalize the specific and enforceable guidelines against greenwashing, confident that such measures would receive judicial support.<sup>15</sup>

Several recent cases, though not directly about greenwashing, signal the judiciary's likely approach:

- *Indian Medical Association v. Union of India* (the "Patanjali Case"): In this highly publicized case, the Supreme Court of India took a stern position against misleading health claims made in advertisements. The Court's emphasis on corporate accountability and the protection of consumers from exploitation and misinformation

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<sup>14</sup> *The Federal Trade Commission's Green Guides: Failing the American Consumer and the Planet*, 35(1) Loyola Consumer L. Rev. (2022).

<sup>15</sup> S. Sensharma, G. Sinha & A. Sharma, *Do Indian Firms Engage in Greenwashing? Evidence from Indian Firms*, 16(5) Australasian Acct. Bus. & Fin. J. (2022).

sets a powerful precedent for how it might view deceptive environmental claims that mislead well-intentioned consumers.

- *Hindustan Unilever Limited v. Sebamed*:<sup>16</sup> This case, concerning comparative advertising, reinforced the legal principle that all claims made in advertisements must be factually accurate and supported by robust evidence. This principle is directly transferable to the substantiation requirements for environmental claims.
- *Ridhima Pandey v. Union of India*: This climate litigation case was filed before the National Green Tribunal (NGT) by a nine-year-old activist, arguing that the government's inaction on climate change violated the rights of future generations. Although the NGT dismissed the petition, it has been appealed to the Supreme Court. The case signifies a growing judicial engagement with the broader duties of both the state and corporations in protecting the environment.
- Volkswagen Emission Scandal Penalty: In the aftermath of the global emissions scandal, the NGT enhanced the penalty imposed on Volkswagen India from ₹1 billion to ₹5 billion, explicitly citing the need for a strong deterrent effect. This ruling demonstrates the judiciary's willingness to impose significant punitive damages for corporate environmental misconduct.

#### 4. Recognizing and Narrowing the Gaps in the Indian Approach to Law

##### 4.1 Analytical Consideration of the Present Legal Regime: Strengths and Remaining Weaknesses

The legislative changes as of 2024, notably the legally enforceable guidelines under the CCPA, denote an important strengthening of India's anti-greenwashing framework. The primary strengths of the present regime are the establishment of a clear legal definition of greenwashing, an effective penalty framework under the CPA 2019 that serves as a credible deterrent, and a requirement for evidential support and accessible disclosures through mechanisms like QR Codes that support transparency.<sup>17</sup> However, as discussed below, despite the above

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<sup>16</sup> Press Trust of India, *CCPA Imposes Rs 10 Lakh Fine on HUL for Misleading Lifebuoy Ads*, Business Standard, Dec. 15, 2023,

<sup>17</sup> Directive (EU) 2024/825 as regards empowering consumers for the green transition through better protection against unfair practices and through better information ("Empowering Consumers Directive") was published in the Official Journal of the European Union on 6 March 2024 and will enter into force on 26 March 2024, Bird &

improvements, there remain significant gaps and challenges with enforcement:

However, despite these advancements, several critical gaps and enforcement challenges persist:

- **Enforcement Capacity and Technical Expertise:** The core strength of the new guidelines—the requirement for verifiable scientific evidence—presents a formidable enforcement challenge. This creates a "substantiation paradox": the rule is strong on paper but may be difficult to enforce in practice. Verifying complex claims across diverse industries, from the biodegradability of polymers to the carbon footprint of a global supply chain, requires a specialized cadre of scientists, engineers, and auditors that the CCPA may lack. Without this technical capacity, regulators may only be able to act against the most blatant falsehoods, leaving sophisticated forms of greenwashing unchecked.<sup>18</sup>
- **Lack of Standardized Methodologies:** The guidelines demand substantiation but do not prescribe standardized, sector-specific methodologies for conducting lifecycle assessments (LCAs), calculating carbon footprints, or defining terms like "sustainably sourced." This ambiguity allows companies to choose methodologies that present their products in the most favorable light, potentially enabling a more sophisticated form of cherry-picking that is difficult for regulators to challenge.
- **A Fragmented and Voluntary Eco-labeling System:** India lacks a single, mandatory, and widely recognized eco-label that consumers can trust. Existing certifications, such as the BIS Eco-Mark, are voluntary and have not achieved widespread adoption or consumer recognition. This fragmentation leads to a proliferation of self-made logos and unverified labels, creating consumer confusion rather than clarity.
- **Regulatory Gap on Carbon Offsetting:** The guidelines do not explicitly ban or stringently regulate claims of "carbon neutrality" that are based on the purchase of carbon offsets. This is a significant gap, as the environmental integrity of many offset projects is highly questionable. This allows companies to continue marketing carbon-intensive products as "neutral" without making substantial reductions in their own

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Bird (2024).

<sup>18</sup> European Commission, *New EU rules to empower consumers for the green transition enter into force* (2024).

value-chain emissions, a practice that is now being banned in other jurisdictions like the European Union.

- **Limited Scope:** The current framework is primarily focused on product-level advertising and marketing claims. It is less equipped to tackle corporate-level greenwashing, which can include misleading ESG (Environmental, Social, and Governance) reports, strategic lobbying against environmental regulations, or public relations campaigns that exaggerate a company's overall sustainability while its core business remains environmentally damaging.

#### **4.2 Lessons from Abroad: A Comparative Glance at the EU and US Frameworks**

A comparative analysis of the regulatory frameworks in the European Union and the United States reveals different philosophies and offers valuable lessons for India.

**The European Union (EU): A "Pre-Approval and Prohibition" Model:** The EU is moving towards the most stringent anti-greenwashing regime globally. The Directive on Empowering Consumers for the Green Transition amends existing consumer law to explicitly ban generic environmental claims like "eco-friendly" or "green" unless the product has achieved "excellent recognised environmental performance" under an official scheme like the EU Ecolabel. Crucially, the directive introduces an outright ban on claims of environmental neutrality based on carbon offsetting schemes and prohibits the use of sustainability labels that are not based on official certification schemes or established by public authorities. The forthcoming Green Claims Directive will go further by proposing a mandatory system of third-party verification for all environmental claims *before* they can be used in the market, shifting the burden of proof to the company pre-publication.

**The United States (US): A Guidance and Enforcement Model:** The US approach is centered on the Federal Trade Commission's (FTC) "Green Guides." These are not binding laws but administrative guidance that clarifies how the FTC will interpret its broad mandate against "unfair or deceptive acts or practices" under Section 5 of the FTC Act. The Guides provide highly specific advice on the use of terms like "recyclable," "compostable," and "made with renewable energy," defining how consumers are likely to perceive them. For example, a product cannot be unqualifiedly claimed as "recyclable" unless recycling facilities are available to a substantial majority (defined as at least 60%) of consumers where the product is sold. The FTC backs this guidance with a strong history of enforcement actions against major corporations, such as Walmart and Kohl's, for making deceptive green claims.

This comparison highlights three distinct regulatory philosophies. The US model relies on detailed guidance to interpret a general law, followed by robust post-facto enforcement. The EU is shifting to a preventative model that prohibits certain claims and requires pre-market verification for others. India has now adopted a "substantiation and post-facto penalty" system, which allows companies to make claims but holds them accountable with severe penalties if those claims are later found to be unsubstantiated. While India's new framework is a significant advancement, the EU's proactive approach of pre-market verification and outright prohibition of the most misleading types of claims offers a more robust preventative model that could inform the future evolution of Indian law.

## **5. Conclusions and Suggestions**

### **5.1. Conclusion**

The Indian marketplace is at a critical moment. Rapidly rising consumer demand for sustainable goods resulted in a dual reality: it has spurred real, corporate innovation, and a strategic pivot to sustainability on the one hand, and opened the floodgates for unchallenged greenwashing, which threatens consumer trust and meaningful environmental change on the other. In response to the phenomena of rampant greenwashing, the Indian consumer protection framework has evolved in compelling and noteworthy ways, shifting from the application of broad, general-purpose consumer protection laws to the introduction of new, focused, and legally binding anti-greenwashing regulations.

The arrival of the 2024 Guidelines of the CCPA is historic. First, it provides clarity in terms of legal definition of greenwashing - the CCPA mandates that any and all environmental claims must be substantiated - and is supported by a strong penalty regime in the Consumer Protection Act, 2019. This is a real shift toward greater transparency and corporate accountability. However, the analysis shows there are still real gaps to be filled. For instance, the success of this regime depends heavily on the capacity to enforce the policy, as well as the absence of standard practice in vetting claims. In addition, an effective eco-labeling market is yet to develop in India, and considerable regulatory blind spots exist in terms of multifaceted issues such as carbon offsets, and "corporate greenwashing". Therefore, we must see the 2024 guidelines as a beginning and not the end of a long journey toward an informed and accountable green marketplace in India.