



**AFRICA
FASHION
LAW**



**SUSTAINABLE FASHION REVOLUTION:
NAVIGATING THE LOCAL LANDSCAPE
FOR A GREENER FUTURE**

Introduction

While fashion is as old as man, its meaning has evolved over the years from being just a tool for protection against the elements to a tool of expression and more recently, of identification. Its use, however, isn't the only thing that has changed, but also the process of creating fashion items. Before technological advancements, slow fashion was a must as a person can only create so much with their hands but then came looms, machines and now, advanced methods of mass producing clothes which has birthed the need to make clothes accessible and affordable to everyone. This seemingly noble goal has led to the phenomenon called **fast fashion**.

In Mongolia, the main producer of cashmere, the constant demand for wool is taking a toll on the environment and jeopardizing traditional ways of life according to a report earlier this month. As the cashmere market has soared in recent decades, so too has the number of goats grazing on Mongolia's grasslands. This, coupled with climate changes, and extreme weather has left around 70% of the pastureland degraded to a large extent that threatens to irreversibly devastate Mongolia's ecosystem. This report is one of the growing concerns that come with fast fashion, and as a result, industry drivers now identify the need to go back to slow fashion.

This publication aims to look at the past, present and future of the fashion industry through the lens of its effect on the environment and the legal reactions to such effects.



What is Sustainable Fashion?

Sustainable fashion is an approach in which clothing is designed, manufactured, distributed and used in ways that are environmentally friendly. A key thing to note from the definition is that the responsibility is shared by the fashion brands and the consumers.

Vogue defines it as an umbrella term for clothes that are created and consumed in a way that can be quite literally, sustained while protecting both the environment and those producing garments.²

According to the UN Sustainable Fashion Alliance³, sustainable fashion covers social and environmental factors and seeks to redefine how clothes are made as well as the conditions of the workers in the industry.



Sustainable Fashion vs. Fast Fashion

To better understand sustainable fashion, one needs to perhaps understand fast fashion, which is the presently popular approach to production and consumption in the fashion industry.

As the name implies, fast fashion is a business model of replicating trends, mass producing them at a low cost and bringing them to retail stores while demand is at its highest. The model involves fast production, fast workers, fast consumption, fast disposal and most importantly, fast profit. Global consumption has increased by over 400% since industrialization and according to Statista, it is forecast to increase by a total of 9, 853.1 million pieces between 2023 and 2027.⁴

The danger in this is high pollution, waste and unsafe workplaces. Global attention started to be paid to the industry after the Bangladesh 2013 death of 1000 workers in the workplace but awareness of unethical practices in the industry came to its peak in 2020 when the condition of offshore owners became popularized.

Apart from the ethical issues connected to fast fashion, it is also responsible for 2 to 8 % of global greenhouse gas emission, 9% of annual micro-plastic losses to the ocean and consumption of 215 trillion litres of water per year.⁵



Sustainable fashion on the other hand is guaranteed to reduce all these consequences of creating fashion as it will reduce overall production rate. If it is the antidote to the woes of fast fashion, how does it solve the ethical and environmental challenges?

- Reimagine value
- Reduced but quality production
- Change in consumption behavior
- Low ecological impact of materials used
- Reduction of the carbon impact
- Recycling and upcycling
- Safe workplaces governed by ethical practices.

With its lofty values having such attractive benefits, it isn't surprising that most countries are seeking to reform their existing fashion habits and adopt sustainable practices and one of the key ways to do this is through legislation.

Laws on Sustainable Fashion

Law is one of the tools of social change due to its ability to enforce compliance via sanctions and rewards. Fashion Law or Apparel Law, as it is sometimes referred to, is a discipline of Law that covers all legal requirements and dealings within a fashion business. Fashion Law covers Intellectual Property law, Employment law, Real Estate law, Advertising Law, International Trade law, Consumer Rights, Business Law and other local governmental regulations concerning the fashion industry. The need for an active and robust legal department is evident when fashion businesses start commerce and interact with consumers on a large scale. To make them sustainable then, there is a need for new sets of laws that will speak to the industry's interaction with the environment. For better understanding, laws on sustainable fashion can be divided into:

- Global laws
- Regional laws
- National laws
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⁵ <https://www.unep.org/news-and-stories/press-release/unep-and-un-climate-change-provide-fashion-communicators-practical#>:

Global Laws

The United Nations has as part of its Sustainable Development Goals decent work and economic growth, clean water and sanitation, responsible consumption and production, climate action, all of which fast fashion violates. To deal with its menace, the UN Climate Action initiated the Fashion Industry Charter for Climate Action with the goal of net-zero emissions by 2050.⁶

The United Climate Change in collaboration with the United Nations Environment Programme also recently launched the Sustainable Fashion Communication Playbook, a guide for consumer-facing communicators in the global fashion industry to align efforts to sustainability targets, incorporating both environmental and social factors. The playbook is a practical guide including lists of dos and don'ts for consideration and case studies as examples of best practices.⁷

Several stakeholders have joined in the United Nations Campaign for a green future under the UN Alliance for Sustainable Fashion⁸ which is an initiative of the United Nations agencies and allied organizations designed to contribute to the Sustainable Development Goals through coordinated action in the fashion sector.



Regional Law

While most organizations are waking up to the need for sustainability, some are still behind in making regulations for the fashion industry. The European Union is however proactive and has made efforts to combat the impact of textile consumption on the environment and climate change.

⁶ <https://unfccc.int/climate-action/sectoral-engagement-for-climate-action/fashion-charter>

⁷ https://wedocs.unep.org/bitstream/handle/20.500.11822/42819/sustainable_fashion_communication_playbook.pdf?sequence=1&isAllowed=y

⁸ <https://unfashionalliance.org/>

The EU has initiated the EU Strategy on Sustainable⁹ and Circular Textiles presents a new approach to achieve climate goals in a harmonized manner. The Strategy aims to create a greener, more competitive and more modern fashion sector in the region by employing measures like,

- New design requirements for textiles
- Clearer information on textiles and a digital product passport based on mandatory information requirements on circularity and other key environmental aspects.
- Tight controls on greenwashing
- Action to address the unintentional release of micro-plastics from textiles.
- Harmonized EU rules on extended producer responsibility for textiles, and economic incentives to make products more sustainable.
- Support to research, innovation and investments and to the development of the skills needed for the green and digital transitions.
- Addressing the challenges related to halting the export of textile waste.
- The co-creation of a transition pathway for the textile ecosystem to establish the way forward and set out concrete step on how to achieve the 2030 goals set by the Textile Strategy.

National Laws

The duty of ensuring a greener future isn't only on international organizations, and individual states have been working to ensure they adopt international best practices into local legislation. One of the countries at the fore of this movement is the United States. The US has three legislations presently on sustainable fashion with one live and adopted and the other two still in different stages of law making. The laws are

- Garment Workers Protection Act
- Fashioning Accountability and Building Real Institutional Change Act (FABRIC Act)
- Fashion Sustainability and Social Accountability Act

Some countries do not have direct legislation for sustainable fashion but have legislations which can still be used in the regulation of water use, gas emission and pollution in the industry. South Africa has three primary laws that are used in regulating the industry which are,

- The National Water Act, 1998 for water and soil impacts
- National Greenhouse Gas Emission Reporting Regulations for textile and leather regulation
- The Extended Producer Responsibility Scheme for Paper, Packaging and some Single Use Products

⁹ https://ec.europa.eu/environment/publications/textiles-strategy_en

Nigeria has no specific law on fashion but recently adopted the IFRS Sustainability Disclosure Standards which makes it the first African nation to do so. The standards provide a global framework for disclosing sustainability and climate-related financial information. There is a need however to do more and domestic more sustainability rules particularly those tailored to the fashion industry.

With growth in awareness, change is slowly but surely happening in the global fashion industry and countries need to do more to make global best practices applicable to their entrepreneurs. The laws can be enforced through rewards or penalties to motivate obedience.



Legal Challenges in the Fashion Industry and the Impact on Fashion Brands

The Fashion industry is a multi-billion industry comprising small medium enterprises, multi-brand conglomerates, couture houses and fast fashion brands from across the world that contribute millions in taxable revenue and economic growth to their respective countries. With ever-increasing globalization, improved financial systems and efficient transportation, the fashion industry is set to grow exponentially, and with such rapid growth comes financial, legal and supply chain challenges that have broad implications for individuals working in the industry.



One of the main legal challenges to arise from fashion businesses is the misuse of Intellectual Property. The IP in a fashion business consists of, trademarks, trade secrets, and patents, all of which are pivotal to the success of the business in a competitive market. In the Fashion industry, like in most industries, having a strong Intellectual Property Protection Strategy is paramount to controlling and crafting a brand's story and image. Majority of legal challenges from fashion brands are as a result of Intellectual Property Infringements such as trademark infringements, copyright disputes, violation of trade agreements or design manipulation. Not having a strong IP strategy can result in a brand dealing with counterfeits, damage to reputation, loss of competitive advantage and market share, and the lack of talent retention. Having a weak IP strategy can result in huge losses in projects and resulting in a business closing its doors. The famous case of Chanel vs. The Real deals with trademark infringement and anti-competition.

Another challenge for fashion legal professionals is the implementation of fair, ethical and sustainable labour laws and practices across their supply chain. Most major fashion houses do not carry out their production in the country of their main operations but instead outsource production to several lower-income countries that do not have strict or enforceable labor practices. Legal departments within fashion houses need to be able to track and account for working wages, comply with local child labour laws, uphold local health and safety laws, uphold local discrimination laws and reduce or eliminate unauthorized working personnel on production sites. All these practices can damage a company's reputation and cause fines from government authorities. For local fashion houses that do not outsource to 2nd party countries, complying with local employment laws and regulations is necessary to keep their operating licenses valid.

A major challenge that has risen sharply in importance is the case of sustainability within supply chains and company social initiatives. The Fashion industry is one of the major polluters globally, and in so, has to take accountability and actions concerning its environmental impact. For quite some time the fashion industry did not have to abide by environmental standards as there was a general lack of enforcement and consumers were not well informed, but all that has changed as consumers are beginning to see the effects of climate change and are demanding better from producers. Fashion houses and the industry as a whole need to focus on renewable and sustainable efforts regarding supply chain management, the circular economy and the rise of sustainable material production. On the legal aspects of sustainability in fashion, we are seeing gained momentum regarding the implementation of regulation and legislation aimed at promoting transparency, ethical and sustainable production and environmentally impactful projects. Recently the state of New York passed the Fashion Sustainability and Social Accountability Act, which requires large fashion companies to disclose information about their environmental and social impacts. This Act is seen as a blueprint for future legislation that will encourage major brands to take their social and environmental impact seriously. Not only are we seeing changes in the adoption of environmental standards and legislation, but we are also

seeing the change in how brands advertise their 'Sustainable' collections. In a world where close to 46% of consumers are looking for more sustainable brands and products the rise of 'greenwashing' advertising and marketing tactics has emerged as a battleground against misinformation and deceptive practices. Recently the European Union has taken major steps to discourage brands from making wildly untrue and misleading statements in their marketing campaigns. Through the EU's Green Directive Claims, all retail businesses operating in the EU need to substantiate, with science-based evidence, any environmental claims they make about their products, failure to do so will result in fines amounting to percentages of annual turnovers.

A recent issue that is forcing the fashion industry to act quickly is the rise of Artificial Intelligence and the impact it has on privacy, data and intellectual property rights. The collection of personal data from websites and other mediums has always been a sore subject for legal professionals, and this hasn't changed with the introduction of AI. AI-powered technologies often collect large amounts of personal data about consumers, including their browsing history, purchase history, social media activity, and even biometric data. This data can be used to track consumers' movements, preferences, and even emotions. It can also be used to target consumers with personalized advertising and marketing. These activities require the brand to seek consent from customers at all times or risk being in a lawsuit.

The fashion industry is complex and ever-changing. Effective fashion law can help to ensure that the industry is fair, ethical, and sustainable. By addressing the challenges facing the fashion industry, effective fashion law can help to create a better future for the industry and its stakeholders.

Conclusion

The intersection of the Law, sustainability, and fashion has evolved from a fringe practice in the early 1990's to being at the forefront of major fashion houses growth strategies and governmental regulation amendments. With the introduction of technologies used to monitor, invent and construct new sustainability metrics, we are seeing the rise of new materials, more resilient supply chains, more progressive and fair working practices and most importantly accountability. From fast fashion to couture and everything in between, transparency is demanded and expected by consumers as they navigate more sustainable options. Making sure that laws and regulations are up to date and enforceable rests not only with fashion law professionals but with government, civil society, Brands, consumers, NGOs and various stakeholders.



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