CHALLENGES OF INTELLECTUAL PROPERTY IN INDIA'S FASHION INDUSTRY: COMPARATIVE ANALYSIS OF COPYRIGHT, DESIGN AND TRADEMARK PROTECTION

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ABSTRACT

Indian fashion industry has become one of the most fast-growing branches of the national economy supported by the innovative creativity, the classical artisanship, and growing markets around the world. The booming nature of this business has, however, also revealed serious flaws with the intellectual property (IP) protection system that regulates fashion designs. The paper will critically evaluate the effectiveness of the Indian legal regime to safeguard the intellectual property related to fashion using the Copyright Act, 1957, the Designs Act, 2000, and the Trademarks Act, 1999. It states that even though these laws in total offer a theoretical basis of protection, they are usually applied in practices in structural overlaps and protection lapses, especially in relation to mass-produced fashion designs and the fast-fashion business model. In the article, there is a struggle between copyright and design protection by Section 15(2) of the Copyright Act that leads to the premature loss of copyright by the occurrence of the industrial reproduction of the designs. Along with it the paper also considers issues of enforcement like digital counterfeiting, procedural delays of civil redress, and weak deterrence of criminal prosecution. By making a comparative study with other legal systems in the United States and the European Union, including those of unregistered design rights and statutory damages, the paper finds that there are significant gaps in the system that exists in India. It ends with recommendations of legislative and procedural changes that would enhance the protection of intellectual property in the fast-changing fashion sector in India.

Keywords: Intellectual Property, Fashion Industry, Fast Fashion, Counterfeiting, Copyrights.

I. INTRODUCTION

Indian fashion industry is an important and the fastest growing segment of the country economy, which is valued at ₹3,00,000 crore in 2021, with projections of compound annual growth of (CAGR) growth of 11–12% through 2026[1] evidently its growth patterns are pointing towards making India one of the biggest fashion industries in the world. This economic eminence lies on the innovative efforts of the multitude of designers, artisans and communities of traditional knowledge whose intellectual property forms the main commercial property of the industry. Fashion designs, unique trademarks, and conventional textile expressions represent significant investments of creativity, cultural background, and economic investments worth a potent form of legal protection. Nevertheless, the legal and enforcement framework was created to protect these intangible assets functions in systemic opposition to the commercial science of modern fashion. The seasonal collections, fast design turnovers, and globalized supply chains are typical features of the industry, which collide with the enforcement mechanisms designed to be applied to entirely different paradigms of industries, leaving protection loopholes that counterfeit businesses use in an organized manner.

The Indian legal system to regulate fashion intellectual property is made up of three major statutes that work in an imperfect coordination. The copyright act of 1957 safeguards original work of art like fashion illustrations and design drawings and the design act of 2000 has been designed to safeguard the design of the article that has been introduced into the industrial process. Trademarks Act, 1999 protects brand names such as logos, labels, and unique packaging against imitations and falsifications. This biparty-tripart legislative framework, which is further supplemented by the Geographical Indications of Goods Act, 1999 in the face of traditional handicrafts, seems to be holistic in its theoretical conceptualization. However, as a matter of practice, these laws cause overlapping claims of jurisdiction and gaps in protection, which sabotage the effectiveness of enforcement. The critical friction point arises where a fashion design has both features as an artistic work entitled to copyright and features as a design capable of registration, and thus forfeiture provisions come into play that divest the entire protection.

The problem of enforcement takes different perspectives in the reality of operations of the fashion industry. Fake fashion products enter the physical stores and online marketplaces

[1] India Brand Equity Foundation, *Textiles and Apparel Industry Report* (2022).

without repercussion and take advantage of the limited capabilities and technological nature of the enforcement agencies. The internet-on offline enforcement gap has facilitated the running of sophisticated counterfeiting networks across jurisdictional lines at the expense of legitimate rights holders having to incur prohibitive monitoring and litigation. Laws that are used to prosecute the traditional crimes of property are not effective when it comes to investigating intellectual crimes that need certain evidentiary backgrounds and technical skills. Civil remedies such as interim injunctions and damages awards are on a time scale that is fundamentally out of synchronization with the fashion commercial cycles that run on weeks instead of years. The model of fast fashion business emulates legally safeguarded designs using slight alterations, which take advantage of the imprecise definition of inspiration and infringement. The old wisdom and handicraft arts that reflect cultural development during centuries are prone to commercial theft without proper community control measures.

This paper dwells around one central research question that is how effectively do India's Copyright, Trademark and Design law enforcement mechanism protect fashion designs when compared with those of other leading fashion jurisdictions like USA and EU and also aims to highlight the intellectual property challenges faced by Indian fashion industry in contemporary world? And to answer it this study examines the doctrinal overlap of copyright law and designs law, where trademark protection falls short, and why civil and criminal remedies are proving to be insufficient and lacking from the demands of contemporary development. It compares India's system to the EU and US, throwing a spotlight on what's missing that is things like unregistered design rights, statutory damages, and faster ways to enforce the law. The focus is on 2021 to 2026, an era of booming co-dependency on technology as e-commerce the courts are also adapting and getting creative in handling issues related to it. By examining actual cases, current laws, and concrete figures regarding anti-counterfeiting, this paper fills general gaps and proposes reform proposals to solve problems in specific areas.

II. RESEARCH METHADOLOGY

This paper is based on a doctrinal and comparative legal research approach to the study of intellectual property protection in the fashion industry in India. The study mainly examines statutory clauses in the Copyright Act of 1957, Designs Act, 2000, and Trademarks Act, 1999 to know their area and constraint in safeguarding fashion design. The interpretation and application of these laws in practical cases is reviewed by looking at judicial precedents of

Indian courts. The analysis also compares the intellectual property laws of the United States and the European Union, especially, design patents and unregistered design rights, to present the gaps in structure and recommend the changes in the Indian legal system.

III. LEGAL FRAMEWORK AND STRUCTURAL SHORTCOMINGS

A. LEGISLATIVE OVERREACH: THE PARADOX OF COPYRIGHT AND DESIGN PROTECTION

The Indian fashion industry is affected by complex overlapping laws, with the Copyright Act, 1957 and the Designs Act, 2000[2] providing different protection regimes for the same subject matter. The Copyright Act protects 'Artistic works' whereas the Designs Act defines a design as features of shape, configuration, pattern, and ornamentation to which an article is applied. Critical friction point arises under section 15(2) of the Copyright Act[3] which is a forfeiture provision: copyright in a design so far as it could have been registered under the Designs Act shall cease immediately the design was used industrially over fifty times. Such legal dis-investment provides a gap in protection in which fashion goods lack copyright and design registration, and designers lack any enforceable rights throughout the commercial life of the product.

The real-life effect of this legal overlap is that fashion designs have been systematically shielded throughout their commercial life. The designers normally print their designs over mass-produced garments containing more than fifty pieces, and this attracts the forfeiture as per Section 15(2) and loss of copyright. At the same time, registration according to the Designs Act does not exclude substantive examinations, which is time-consuming and requires six months to a year, which is enough time before the fashion season ends. This interpretive challenge has been wrestled by the Delhi High Court most notably in *Microfibres Inc v Girdhar & Co*[4] and *Ritika Pvt Ltd v Biba Apparels*[5], yet the underlying legislative conflict remains unresolved.

When compared to leading jurisdictions like the United Kingdom, where the 'Unregistered Design Right' provides automatic, short-term protection without the need for registration or

[2] The Designs Act, No. 16 of 2000, India Code (2000).
[3] The Copyright Act, No. 14 of 1957, India Code (1957).
[4] *Microfibres Inc. v. Girdhar & Co.*, RFA (OS) No. 25/2006, (Del. HC May 28, 2009).
[5] *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, CS (OS) No. 182/2011, (Del. HC Mar. 23, 2016).

unit-count limitations, the Indian framework appears structurally deficient. This lack of an unregistered right, combined with the rigidity of Section 15(2), creates a 'safe harbor' for counterfeiters who exploit this gap to replicate designs with impunity, knowing the original creator is trapped between an expired copyright and a pending design registration.

B. FAST FASHION INDUSTRY: THE STRUCTURAL INADEQUACY OF DESIGN ACT, 2000

The Designs Act, 2000 has been in workings on a time scale which is fundamentally out of time with commercial dynamics of the Indian fast fashion industry. Section 11 grants to the registered proprietor a copyright on the design of an initial term of ten years with a renewal of five years. This period of fifteen years of protection assumes long commercial exploitation turnover that is typical of the traditional manufacturing industries. But in modern fast fashion, the operations are mostly based on seasonal collections of only four to eight weeks with several micro-seasons a year. The legislative premise on the longevity of design is not in any way connected to an industry, where designs are obsolete before registration certificates have even been granted by the Patent Office.

The bureaucratic nature of design registration poses impassable obstacles to fashion players who want to get safeguarded in time. Section 5 requires substantive study of every application, where the ‘Novelty’ and originality need to be evaluated against the prior art. This design cycle normally takes six to twelve months of time, by the time the corresponding fashion season is over, and the design is dumped in the next collections. Section 19 also allows post-grant opposition thereby creating more uncertainty which will not encourage investment in registration. There being no unregistered design protection system, as compared to the system in the European Community design, leaves the Indian fashion houses without options during the critical period between the creation and commercializing of the same. This timing issue is used by fast fashion reproducers, who copy the designs within days of their debut on the red-carpet or at the runway debuts.

IV. ENFORCEMENT CHALLENGES OF COUNTERFEITING AND TRADEMARK

A. THE DIGITAL-PHYSICAL ENFORCEMENT GAP

The emergence of e-commerce platforms has completely changed the way fashion

counterfeiting is carried out, and this has placed a gap in enforcing laws that traditional jurisdiction cannot sufficiently cover. Online malls allow counterfeiters to access millions of customers without brick-and-mortar stores, with inventory display and geographical anonymity. Under the Information Technology act 2000 section 79, 'Safe Harbor' safeguards the intermediaries who are not the source of transmission, choices of the recipient, or to alter the information found in the transmission. It is a conditional immunity that the e-commerce sites are not obligated in any affirmative way to actively check the listings of fake fashion on their site. The responsibility of the rights holders to detect, notify, and enforce follow up is all on them, which is an intensive resource consuming process that benefits advanced counterfeit monetary systems that operate at several platforms at a time. [6]

The cross-border e-commerce jurisdictional complexities also make the fight against online fashion counterfeiting at standoff. Indian fashion companies must deal with fake listings by servers in jurisdictions where IP laws are not well enforced, sellers that provide their contact under false names and payment gateways that send the transactions through various countries. The information technology rules on the notice-and-takedown act demand that the resource locators should be accurate, and the counterfeiters can repost the same listing under different address within hours of deletion. While the Delhi High Court in *Christian Louboutin SAS v Nakul Bajaj*[7]established that platforms which actively curate or promote goods lose their intermediary immunity, the practical utility of this remains limited. This limited practical utility of temporary injunctions against John Doe defendants even with creative usage by Indian courts is that digital actors who vanish and re-emerge with technological dexterity will be hard to stop with this type of legal action. The security apparatus that is geared towards bricks and mortar markets is simply unprepared to handle digital malls that are unbound by a single nation.

B. ENFORCEMENT MECHANISMS OF A WEAK CRIMINAL JUSTICE SYSTEM

The Counterfeit fashion accounts for 10–12% of India's apparel market, costing legitimate businesses nearly as the 2024-2026 data shows over ₹4 lakh crore annually[8] thus it is very

[6] The Information Technology Act, No. 21 of 2000, India Code (2000).
[7] *Christian Louboutin SAS v. Nakul Bajaj*, CS (COMM) No. 344/2018, (Del. HC Nov. 2, 2018).
[8] FICCI CACSCADE, *Illicit Market: A Threat to Our National Interests* (2024) " " visited on date

critical for Indian Criminal Justice System to evolve. The criminal enforcement system provided by the Trademarks Act, 1999 poses strong procedural obstacles that make punitive provisions rather inefficient in reducing the fashion counterfeiting activities. Section 103 and 104 impose penalties of up to 6 months to three years in prison and penalties of up to 20,000 to infringe trademarks, but the imposition has to go through complicated procedural conditions. The police officers, below the ranking of Deputy Superintendent of Police, are unable to investigate offences under section 115(4) of the Act without the approval of the magistrates as affirmed, which causes delays in the bureaucracy at the expense of disappearance of infringing goods in markets. The fact that IP offences are not always cognizable and bailable only makes deterrence less effective because fake creators get bail instantly and they go on with their business as their trials remain pending in clogged criminal justice systems. [9]

The provisional burden of evidence imposed on the owners of fashion brands leads to further enforcement paralysis of the criminal justice system. The persons who own the rights are supposed to prove the title, infringement, knowledge or intent of the accused, and losses before criminal courts that are not used to IP adjudication. The operations of seizure need to have the organized presence of brand representatives, local police and magistrates, which is logistically difficult, and is used by counterfeiters due to the established intelligence networks. The lack of special IP criminal courts implies that cases on fashion counterfeits are competing with homicide and property offences in terms of the attention they receive in a court of law. As a result, the process of criminal prosecution is now more symbolic than practical and with the rates of conviction being still negligible even in the case of epidemic-like counterfeiting in the fashion retail system of India.

V. CIVIL REMEDIES AND JUDICIAL ANALYSIS

A. ILLUSORY REMEDIES: COMMERCIAL INEFFECTIVENESS OF ORDER 39

Interim relief obtained at the inception of the litigation process is important to the effectiveness of civil enforcement of fashion IP cases. Fashion designs are especially temporal commercial entities in terms of weeks of existence and not a years-long cycle of consumption. In the case of an interim injunction, Order XXX IX rules 1 and 2 of the Code of Civil Procedure, 1908

[9] The Trade Marks Act, 1999

stipulates that the plaintiffs must prove a prima facie case, balance of convenience, and irreparable injury "The Triple Test". Although these principles may seem as accommodative, but in fashion industry the "irreparable loss" is a utopian dream as its almost impossible to quantify because the trend ends before the trial does and the judicial refusal to grant ex parte injunctions without giving notice to the defendants has increased over the recent years.[10] Fashion brands are now obligated to submit voluminous pre-institutional documentation, bargain over-in-advance notices, or wait over a trial of fact in the face of the infringing stocks being emptied in a systematic manner via the grey market.

In the landmark ruling of *Ritika Private Limited v. Biba Apparels Private Limited*, the court highlighted serious deficiencies in interim protection. The court strictly interpreted Article 15(2) of the Copyright Act and held that copyright protection ends if a design is industrialized more than 50 times.[11] This creates a 'remedial vacuum' for designers who do not have a registered design. In the context of Order 39 of the CPC, this means a plaintiff may have a clear case of 'copying,' yet they fail the prima facie test because their legal right has expired by operation of law. Thus, for the fast-fashion sector where production always exceeds 50 units, interim relief under Order 39 becomes an illusory remedy.

Given the inherent delay in standard CPC procedures, designers are increasingly forced to seek Anton Piller Orders, "The Necessity of 'Nuclear' Remedies" an extraordinary form of interim relief. As seen in *National Garments v. National Apparels (1989)*[12], the court recognized that standard notice-based injunctions are often inadequate because infringers can easily liquidate stock or destroy evidence of 'knockoffs' before a hearing. However, the high evidentiary threshold required to secure such an order proving a 'grave risk' of evidence of destruction renders it inaccessible for emerging designers. This further reinforces the argument that the standard framework of Order 39, Rules 1 and 2 lacks the agility required to address the rapid lifecycle of fashion piracy, so it is necessary to add "Element of Surprise" to preserve the evidence.

B. DETERRENCE DEFICIT IN FASHION IP REMEDIES

The Indian IP infringement remedial framework of fashion lacks the chronic lack of deterrence

[10] Code of Civil Procedure, No. 5 of 1908, India Code (1908).
[11] *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, CS (OS) No. 182/2011, (Del. HC Mar. 23, 2016).
[12] *National Garments v. National Apparels*, C.M.A. No. 39/1989, (Ker. HC Apr. 5, 1989).

that can largely be attributed to the conservative jurisprudence of damages. The Trademarks Act of 1999: Section 135 provides that the court has the power to provide damages or account of profits in the discretion of the plaintiff under the Trademarks Act.

the Copyright Act of 1955: Section 55 provides that; the court can award damages or accounts of profits at the will of the plaintiff. Indian courts have been found to show a strong opposition to granting large sums of compensatory damages, despite statutory availability, and even in deliberate and grossly offensive counterfeiting. The awards by courts are always limited to nominal amounts that have no relationship to infringer gains or losses incurred to rights holders. Such judicial conservatism is fundamentally damaging to the deterrent effect of civil remedies because counterfeiters reasonably calculate that infringement in this area will run far beyond the amount of adverse decree is likely to be awarded.

The fact-finding burden expected of the fashion plaintiffs is the major barrier to substantial damages of recovery. The rights holders should be able to demonstrate actual volume of sales, show accurate margins of profits, explain causal relationships of infringement and lost sales, and isolate brand value and misconducts of the infringers. Fashion businesses cannot afford to keep such granular financial information separated by design or collection. The infringer accounts of profits are equally difficult to capture because the counterfeiters use cash transactions that are not recorded in the books, no inventory record is kept, and the business entities are dissolved when they are detected. Lack of presumptive damages provisions as with statutory damages frameworks in the US leaves Indian fashion plaintiffs without a choice in situations when quantification is not possible. Moreover, punitive or exemplary damages are rare, but not absent in Indian IP law. Occasionally, courts grant damages that are stronger than their usual scale in the egregious violations, as done in the case of *Time Incorporated v. Lokesh Srivastava (2005)*[13], the Delhi High Court established a landmark precedent by awarding punitive damages, rather than just compensatory, to address the "deterrence deficit" in IP infringement cases yet the lack of uniformity in the principles of measuring the damages effectively achieves nothing in the way of predictable deterring penalties on counterfeiting.

VI. COMPARATIVE JURISPRUDENCE: THE US AND EU MODELS

A. UNREGISTERED COMMUNITY DESIGN of EU

[13] *Time Inc. v. Lokesh Srivastava*, CS (OS) No. 2169/1999, (Del. HC Jan. 3, 2005).

One of the best comparisons is European Union's legal framework, namely, the Unregistered Community Design (UCD) introduced by the Council Regulation (EC) No 6/2002. The Sui generis protection comes automatically through the initial public disclosure and in the European Union, no application, no examination and no registration formalities are required. Protection lasts three years since the date of the first presentation of design to the community on the Community territory. It is only necessary that the design be novel and have individual character which is determined to give out a different overall impression to the informed users than previous designs. This low barrier, no frills system fits the commercial cycles of the fashion industry which have several annual collections.

The famous landmark Irish Supreme Court ruling *Karen Millen Fashions Ltd v Dunnes Stores [2014]*[14] established that an unregistered design possesses individual character if it creates a different overall impression on an informed user compared to existing designs, without requiring novelty in every detail. The ruling, which rejected the "mosaicking" of prior art, provides a significant, automatic legal shield for fashion designers under EU law. The unregistered Community design protection of substantive rights is not similar to the registered counterpart. The rights holders can only bar commercial exploitations whereby the disputed exploitation is a product of the copy of the safeguarded design, unlike registered design protection that forbids even the independent creation. This coping condition requires access to evidence and substantial similarity, which places evidentiary burdens where they are due, on unregistered rights. Through unitary proceedings, fashion houses can enlist preliminary injunctions in all the EU member states within weeks of their collections being launched, initiating infringement proceedings. The three years of protection is the commercial period of most fashion designs and after the period is passed; designs are released into the open arena. This measured protection period can preclude endless monopolies and give some substantive enforcement power in commercial exploitation intervals. Such a provision being lacking in Indian intellectual property legislation poses the Indian based fashion businesses working in the international market with a major competitive drawback.

B. US MODEL: DESIGN PATENTS AND TRADE DRESS PROTECTIONS

The US legal regime can provide two additional forms of protection to the stakeholders of the fashion industry that are not provided in the Indian enforcement system*:* Design Patents and

[14] *Karen Millen Fashions Ltd v. Dunnes Stores*, Case C-345/13, [2014] E.C.R. I-2013 (CJEU June 19, 2014).

Trade Dress Protection. Design patents as stipulated in Chapter 16 of the 35 USC safeguard fresh, new, and ornamental designs of pieces of manufacture against infringement, granting a duration of fifteen years.[15] The United States Patent and Trademark Office, as compared to the Indian design registration process, which takes six to twelve months, has accelerated examination tracks that can grant design patents to eligible applicants in three to six months. This is a faster schedule that, although still untenable to the ultra-fast fashion cycle, offers significant protection periods to the seasonal collections. The design patents safeguard the overall ornamental look regardless of the separation of the articles, unlike the Indian Designs act where the protection is extended to articles. Section 43(a) of the Lanham Act[16] in US Trade dress protection offers the protection of trademarks to the overall impression and the general appearance of products, such as colors, shape, configurations, and packaging. In the *Wal-Mart Stores, Inc. v. Samara Brothers, Inc*.[17] that was decided by the United States Supreme Court, product design trade dress can never be intrinsic and must have secondary meaning to protect it. Trade dress protection despite this evidence of weight, the protection persists as long as the mark is distinctive and in commercial use, which may provide an indefinite protection that could not be obtained under design patent or copyright laws. The situation is less fortunate with Indian fashion brands that have devoted years in creating signature design features like special patterns of embroideries, color combination or a way their clothes are treated, among others. Another aspect of the Lanham Act is the incontestable status after five years of constant use which goes a long way in strengthening the enforcement sides in case of counterfeiters. Additionally, 15 USC 1117(c) of the Act allows for statutory damages for fraudulent counterfeiting up to $2 million per counterfeit stamp, a real deterrent not found in Indian damages jurisprudence.

VII. VULNERABILITIES OF INDUSTRY AND EMERGING ISSUES

A. "INSPIRATION VS. INFRINGEMENT"

The legal grey area of the Indian fast fashion industry is between what can be inspired and what can be infringed, engaging in challenges of enforcing the law on original designers. Fast fashion business strategies rely on the speedy copying of luxurious runways, celebrity fashion and independent designers at halved prices and shortened time frames engaging the

[15] 35 U.S.C. §§ 171–173 (2012) (Design Patents).
[16] Lanham Act, 15 U.S.C. § 1125(a) (2012).
[17] *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205 (2000).

problematic 'Idea-Expression Dichotomy.' As famously established by the Supreme Court of India in *RG Anand v Delux Films (1978)*[18], copyright safeguards the original expression of an artistic work but does not extend to the underlying ideas or functional techniques. In fashion, elements such as colour palettes and silhouettes often teeter on this edge, being dismissed as 'unprotectable ideas.'

The Indian judiciary has struggled to develop a consistent test for fashion. Under the current 'Substantial Similarity' test often interpreted through the 'Ordinary Observer' lens as seen in *Skechers USA Inc v Metro Shoes Ltd(2022)*[19], *defendants* escape liability by making minor alterations to buttons or trim. The factual hurdle that is placed on plaintiff designers in fast fashion litigation is incredibly heavy when considered within the pressurized commercial timeframes. The rights holders should prove the access to the original work and significant similarities between the expression that is provided as protection and the work that is accused. The fast fashion defendants regularly alter the designs of the plaintiffs, making small changes in the positioning of the buttons, block placement, or trim details without changing the commercial impression. The Indian copyright jurisprudence places the substantial similarity as viewed through the eyes of a layman, although fashion consumers buy based on the general aesthetic appeal and not the design component by design. The indistinct line between the use of a trend and the illegal imitation is made more difficult by the fact that trend forecasting services that offer the same directional opinion to multiple competing brands are an industry practice. In Indian fashion plaintiffs are required to pursue lawsuits concerning these subtle factual judgments on evidentiary windows that run out with their business lines.

B. PROTECTION OF TRADITIONAL KNOWLEDGE AND HANDICRAFTS

The Indian fashion industry heavily relies on the abundance of traditional knowledge and native handicraft skills in the country, which also leads to unique enforcement issues, unlike those in the traditional fashion IP litigation. Indigenous weaving cultures like Banarasi, Kanchipuram, Patola, and traditional embroidery like Chikankari, Phulkari, Kantha and Zardozi are not owned by people but by a group of people. Copyright Act, 1957 and the Designs Act, 2000 is not intended to safeguard a community whose artistic expression has been developed through generations with no identifiable authors. This lawmaking paradigm has given a vacuum in

[18] *R.G. Anand v. Delux Films*, (1978) 4 SCC 118 (India).
[19] *Skechers USA Inc. v. Metro Shoes Ltd.*, (Del. HC 2022).

protection where businesses of commercial fashion take liberty in stealing traditional designs without permission, remuneration, and without any cultural attribution. The artisan groups who hold the knowledge and the ability to produce these traditional works do not have any authority to enforce any rights on the expressions which they have so far collectively affirmed over centuries.

The judicial recognition of fashion as a protectable 'artistic work' was solidified in the landmark ruling of *Rajesh Masrani v Tahiliani Design Pvt Ltd (2008)*[20]. Thus, this protection deficit of the native products prompted the enactment of the Geographical Indications of Goods (Registration and Protection) Act, 1999. Geographical signs designate commodities as originating in a specific geographical area where a specific quality, fame, or character is essentially due to geographical origin. The register now has registrations for Lucknow Chikan Craft, Kanchipuram Silk, Banaras Brocade, and many other textile and handicraft GIs. Nevertheless, enforcement mechanisms have not been critically employed and do not provide access to the artisan communities in terms of procedure. Section 22 offers remedies where infringement occurs such as injunction and damages, but litigation is also costly in terms of money and time and skills that are not available to conventional artisans. Moreover, GI protection is not applicable to all indications registered, but only to the registered ones, which exposes many unregistered traditional design expressions to vulnerability. Valuable traditional knowledge is not protected by its own institutions, unlike in many other countries, and is constantly at risk of being exploited without the possibility of legal protection. [21]

VIII. RECOMMENDATIONS AND CONCLUSION

According to the latest OECD/EUIPO data (2025), the counterfeit fashion clothing market is valued at approximately USD 467 billion globally, accounting for approximately 2.3% of global trade, but the impact in India is particularly severe. India remains one of the largest jurisdictions affected by this trade, with the domestic market value of illegal clothing valued at over Rs 4 million, highlighting the urgent need for judicial reform[22]. Creativity is flourishing, but the laws that protect it (Copyright Act 1957, Designs Act 2000, Trademarks Act 1999) have not yet caught up with the times. The gap between the speed

[20] *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, FAO (OS) No. 393/2008, (Del. HC Nov. 28, 2008).
[21] The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India Code (1999).
[22] OECD/EUIPO, Mapping Global Trade in Fakes 2025: Global Trends and Enforcement Challenges 11 (2025).

of India's judicial system and the speed of the global fashion industry creates a renewable vacuum that can only be overcome through institutional change.

A. EVOLUTION OF LAW: SHIFTING PARADIGMS

To align the Indian fashion industry with global fashion, the first change needed is to reconsider Section 15(2) considering mass production realities, this provision inadvertently penalizes commercial success by extinguishing copyright once mass production begins. It needs to be replaced with the Conceptual Separability test, which the US Supreme Court has endorsed in the case of Star Athletica, protecting artistic works despite the number of copies made.

The next change is the implementation of the Unregistered Design Right, similar to the EU Council Regulation 6/2002, which grants automatic protection for three years on public disclosure of the design. This will eliminate the bureaucratic delays that plague the industry and leave designs in the dark during the seasons. Finally, the implementation of statutory damages is the way to go, moving from the deterrence deficit to deterrence surplus, where piracy is much more expensive than the benefits of counterfeiting.

B. PROCEDURAL AGILITY: JUDICIAL AND EXECUTIVE REFORM

The lack of interim relief under Order 39 requires the creation of specialized IP courts and the appointment of judges who understand the reality that in fashion, in fashion, delayed relief is equivalent to denied relief, as designs lose relevance within weeks. A fast-track court must be set up to grant injunctions in 72 hours (about 6 days) during the seasons. Streamline ex parte injunction standards in seasonal industries. Enhance coordination between customs and trademark authorities. As far as enforcement is concerned, the procedural hurdles in Article 115(4) of the Trademark Law need to be eased so that customs officials can act quickly in the fight against counterfeit goods. Requirements for senior officials allow counterfeit goods to flourish in the country.

C. INDUSTRIAL SYNERGIES AND FUTURE DIRECTIONS

While the need to reform laws and the judicial system is vital to the development of fashion IP protection in India, the industry is also crucial in this process. This is because the existing system has several loopholes that cannot be solved through the judicial system, and the fashion industry needs to come together to self-regulate and self-enforce to plug these loopholes.

The first way to self-regulate and self-enforce is to set up a Fashion Design Protection Registry/Collective Rights Management Body, which would record the designs and give them a timestamp on the date of creation. This would not be in addition to the Designs Act but rather would be used to support the case in the event of infringement to prove ownership and the date of creation and the originality of the design. This has been done in the case of the music and film industries to ease the burden of proof and hasten the process of settling disputes.

The second way is to have standard agreements in the fashion industry when designers work with manufacturers and influencers to avoid the common problems that occur in the production cycle of the fashion industry due to the lack of formal production agreements.

The third way is to self-enforce the fight against counterfeiting in the fashion industry. This would be done through the cooperation of industry players and e-commerce platforms, rather than relying on the notice and takedown provisions of Section 79 of the IT Act, which has several limitations and is often not effective in the fight against counterfeiting in the fashion industry.

The fourth way is to educate consumers on the dangers of counterfeiting and the need to buy genuine fashion goods. A big part of the counterfeiting problem is the consumers who seek cheap and fake goods in the market and the lack of incentives to buy genuine goods due to the lack of ability to tell the difference between genuine and fake goods.

D. CONCLUSION

The fashion industry in India is embedded in an IP system that is robust but struggling to cope with the demands of the fast fashion. This is evident from the way The Copyright Act of 1957, The Designs Act of 2000, and The Trade Marks Act of 1999 interact and the way in which these laws have evolved over the years to meet the demands of the industry.

The issue is not absence of protection, but its miscalibration to industry needs. Today, the IP protection system in the fashion industry is at two extremes: early termination and cumbersome procedures, which are not suitable, especially when designers are moving into the realm of mass production. Experience in other countries has demonstrated that it is possible to have IP protection in the fashion industry and still have a competitive market. What is needed is not maximum protection but protection that is well calibrated and strikes the right balance between

protecting the designer and the fashion industry and providing the market with the fashion it needs at the right price.

The key to the evolution of the IP protection system is to move beyond the piecemeal approach and to look at the legislative, procedural, and industry sides of the equation to create an IP protection system that is not only robust but also practical and not merely theoretical.

The fashion industry in India is not only about the creative talent but also the ability of the IP protection system to cope with the demands, in the context of the changing landscape of the industry, which is characterized by speed, visibility, and replication. Intellectual property protection needs to evolve to meet the changing demands and requirements in the context of the changing landscape of the industry.

REFERENCES

Case Law

- *Microfibres Inc. v. Girdhar & Co.*, RFA (OS) No. 25/2006, (Del. HC May 28, 2009).
- *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.*, CS (OS) No. 182/2011, (Del. HC Mar. 23, 2016).
- *Christian Louboutin SAS v. Nakul Bajaj*, CS (COMM) No. 344/2018, (Del. HC Nov. 2, 2018).
- *National Garments v. National Apparels*, C.M.A. No. 39/1989, (Ker. HC Apr. 5, 1989).
- *Time Inc. v. Lokesh Srivastava*, CS (OS) No. 2169/1999, (Del. HC Jan. 3, 2005).
- *R.G. Anand v. Delux Films*, (1978) 4 SCC 118 (India).
- *Skechers USA Inc. v. Metro Shoes Ltd.*, (Del. HC 2022).
- *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, FAO (OS) No. 393/2008, (Del. HC Nov. 28, 2008).
- *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205 (2000).
- *Karen Millen Fashions Ltd. v. Dunnes Stores*, Case C-345/13, [2014] E.C.R. I-2013 (CJEU June 19, 2014).
- *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

Statutes (India)

- The Copyright Act, No. 14 of 1957, India Code (1957).
- The Designs Act, No. 16 of 2000, India Code (2000).
- The Trade Marks Act, No. 47 of 1999, India Code (1999).

- The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, India Code (1999).
- The Information Technology Act, No. 21 of 2000, India Code (2000).
- Code of Civil Procedure, No. 5 of 1908, India Code (1908).

Statutes (US/EU)

- Lanham Act, 15 U.S.C. § 1125(a) (2012).
- 35 U.S.C. §§ 171–173 (2012) (Design Patents).
- Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community Designs, 2002 O.J. (L 3) 1.

Reports & Secondary Sources

- India Brand Equity Foundation, *Textiles and Apparel Industry Report* (2022).
- FICCI CACSCADE, *Illicit Market: A Threat to Our National Interests* (2024).
- OECD/EUIPO, Mapping Global Trade in Fakes 2025: Global Trends and Enforcement Challenges 11 (2025).